

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 12, 2020

LATHROP: Good afternoon. Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop and I represent Legislative District 12. That includes Ralston and parts of southwest Omaha. I'm also the Chair of this committee. On the table inside the doors, you will find yellow testifier sheets. If you're planning on testifying today, please fill one out and hand it to the page when you come up to testify. There's also a white sheet on the table if you do not wish to testify, but would like to record your position on a bill. For future reference, if you're not testifying in, in person and would like to submit a letter for the official record all committees have a deadline of 5:00 p.m. the last workday before the hearing. Keep in mind that you may submit a letter for the record or testify in person, but not both. And only those actually testifying in person at a hearing will be listed on our committee's statement. We will begin testimony with the introducer's opening statement, followed by the proponents of the bill, than opponents. And finally, anyone speaking in the neutral capacity. We will finish with closing statement by the introducer if they wish to give one. We utilize an on-deck chair system. It's right behind the testifier's table. Please keep the on-deck chairs filled with the next person to testify to keep the hearing moving along. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have any handouts, please bring 12 copies with you and give them to the page. If you do not have enough copies, let the page know and they'd be happy to make one for you or more. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you won't be allowed to read it. We will be utilizing the three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings. You may, however, see senators use them to take notes or stay in contact with staff. At this time, I'd ask everyone to look at their cell phones and make sure they're in the silent mode. Also, verbal outbursts or applause, things like that are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. You may notice committee members coming and going or not showing up exactly at 1:30. Now that has nothing to do with the importance of the bills being heard. But senators have other bills to introduce in other committees or have other meetings to attend to. I'd like to have the committee members introduce themselves. And we'll start with Senator DeBoer to my left.

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DeBOER: Hi, my name is Senator Wendy DeBoer. I'm from District 10, which is northwest Omaha, Bennington, and the surrounding areas.

BRANDT: Tom Brandt, Legislative District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

PANSING BROOKS: Hi, Patty Pansing Brooks, District 28, right here in the heart of Lincoln.

MORFELD: Adam Morfeld, District 46, northeast Lincoln.

SLAMA: Julie Slama, District 1: Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties.

LATHROP: Assisting the committee today are Laurie Vollertsen, to my left our committee clerk; and Neal Erickson, one of our two legal counsel. Our committee pages are Ashton Krebs and Lorenzo Catalano, both students at UNL. They're the guys in the white shirts with the black vests. Thank you. And with that, we will begin our first hearing, which is LB978 and Senator Murman.

MURMAN: Chairman Lathrop and members of the Judiciary Committee, for the record, my name is Senator Dave Murman, D-a-v-e M-u-r-m-a-n. I represent District 38, the counties of Clay, Nuckolls, Webster, Franklin, Kearney, Phelps, and southwest Buffalo County. Today, I bring you LB978. LB978 states that if a person escaped from or committed a crime at a facility operated by the Department of Correctional Services or the Department of Health and Human Services and are being apprehended in a county, city, or village jail, that local law enforcement agency shall be reimbursed for the cost of the lodging. LB978 stems from a series of hearings that the Health and Human Services Committee had over the interim regarding the YRTCs in Geneva and Kearney. At the hearing in Kearney, there was a great dialog between the Buffalo County Sheriff and the Health and Human Services Committee. One question that led ultimately to this bill was the cost when an individual would escape or commit a crime and would need to stay in the county jail. The chief deputy sheriff from Buffalo County is here today and is planning on speaking more to the costs associated with the stay. At the base of our conversations, both Sheriff Miller and I agreed that the absolute most important thing is that individuals should be receiving their programming in the Youth Rehabilitation and Treatment Centers. The programs and treatment services at a YRTC are required to be based on an individual or family evaluation process. The programming's main goal is to be reentry for the juvenile into the community. The YRTCs were created in the late

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1800s and have developed since then in what we know them as today, a place of increased programming, mental health and substance abuse treatment centers, and a place of job training with the ultimate goal of returning juveniles back to the community. The Department of Health and Human Services runs four different youth facilities across Nebraska: YRTC-Kearney, YRTC-Geneva, the Hastings Juvenile Chemical Dependency Program, and Whitehall in Lincoln. In regards to the bill, the Hastings and the Whitehall facility aren't directly mentioned in statute, so they are referred to as any juvenile chemical dependency program or juvenile psychiatric resident-- residential treatment. I wanted to reiterate that this bill isn't only about reimbursements for the YRTCs, but also for the Nebraska Department of Correctional Services. This bill was just created based on conversations about the YRTCs. If a situation arises of an individual committing a crime such as an assault and the safest place for them, their peers, administration, and guards, is to be in a secure jail setting, then I understand that. I just believe that the city or county jail should be reimbursed for the cost of lodging by the Department of Correctional Services. It was shared with me that in the year 2019, the Buffalo County jail held three inmates in a, in a pretrial status for a total of 432 days. It breaks down by inmate to 196 days, 235 days, and 1 day. The inmate that served the 235 days is still currently there. When law enforcement at the city or county level apprehends an individual and then they're lodged at their facility, that's more taxpayer dollars at the county or city level going to support a cost that the state should be covering. One thing that this bill does not cover is a reimbursement rate. In the case of costs for medical services, this reimbursement requirement wouldn't apply because that is already covered in sections 47-701 to 47-705. I know that there is a reimbursement rate for the state of \$80 per day that the Nebraska Department of Correctional Services charges counties for safe keepers. This is something that we need to address as we move forward, as we address adding the YRTs-- YRTCs for reimbursement. Looking at the data I provided about the three individuals being held in the county jail in Kearney from the YRTC, it would have totaled \$38,448 plus the medical expenses incurred. There are other data points included in the fiscal note about the Nebraska Department of Correctional Services. A part of the bill that we included was for the safety of all those involved. If there is a report of an assault by an individual inside a YRTC on one of their peers, a member of the administration, or a guard, the county would have the option of securing the individual. After speaking with the county attorney, the county would not expect a reimbursement for this stay because they requested it. We would never want to see a trend of assaults in the YRTCs not being reported

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because the state wouldn't want to reimburse the county or city jail. Therefore, it was decided the city or county would not request reimbursement. Our ultimate goal in a YRTC facility is, is safety for all involved. As a member of Health and Human Services Committee, I have been heavily involved with figuring out, figuring out our best practices for YRTCs in Nebraska. As members on the Judiciary Committee, you can relate to that as well. Our biggest concern is the safety of all men and women involved. My second concern is the taxpayers' dollars. With that, I'll try and answer any questions that you have. But I know there are individuals directly associated with the county apprehension behind me that can, that can address specific questions.

LATHROP: OK. Thank you, Senator Murman, for bringing the bill. I don't see any questions at this time. Do you intend to stick around?

MURMAN: Yes.

LATHROP: OK. Can I see by show of hands the number of people that are going to testify on this bill? It's like two or three. Oh, Morfeld's second. All right, you may come forward if you're a proponent. I do that so that we can alert the next introducer.

MORFELD: Oh, I got you. Oh, I got you. Like, I'm not testifying on the bill.

LATHROP: You happen to be here.

MORFELD: Yeah.

LATHROP: Good afternoon.

ELAINE MENZEL: Good afternoon, Senator Lathrop and members of the Judiciary Committee. For the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials in support of LB978. And first of all, we do want to thank Senator Murman for bringing this to your attention or for your consideration. I believe he did an excellent job describing the issues, and it's my understanding that people who are more involved with the situation will be able to testify later. With that said, I'll certainly-- the property tax interest is certainly a great consideration and concern to us. If you've got additional questions, I will attempt to answer them.

LATHROP: I do not see any questions for you, but thanks for--

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ELAINE MENZEL: Thank you, Senator.

LATHROP: --being here today, Ms. Menzel. Next proponent. Good afternoon.

DAN SCHLEUSENER: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. Thank you. My name is Dan Schleusener, I'm representing Buffalo County, D-a-n S-c-h-l-e-u-s-e-n-e-r. I am the chief deputy with the Buffalo County Sheriff's Office. I would like to thank Senator Murman for introducing this, this legislation. Excuse me. If Buffalo County is to continue housing youth from the Youth Rehabilitation Treatment Center in Kearney, that are-- those youth are the responsibility of the state. And if we are to house those inmate-- those youth in a pretrial status for crimes or events that were committed at the YRTC, we would ask that the county be reimbursed at a rate similar to that, that the state charges counties. When a county jail has a inmate charged in a felony capacity that we are not able to handle or provide for, we take the inmate to the Nebraska Department Correctional Services where we're charged a rate of \$89 a day plus medical. We would just ask that-- that would work conversely with those coming from the YRTC.

LATHROP: OK. Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming today. Is it sheriff?

DAN SCHLEUSENER: Chief deputy.

PANSING BROOKS: Oh, chief deputy, thank you for coming today. And maybe I can ask Senator Murman, but I'm just trying to-- I was trying to read through this to understand. What about-- so are you having issues with the kids that are, are escaping or can you explain a little bit of, of what's happening? And I guess my concern about unintended consequences is, does that force the YRTCs and the other places to all of a sudden tromp down even further on the kids and when it's not supposed to be? Those places are not supposed to be places for imprisoning kids, they're for rehabilitation and treatment. And so if all of a sudden they feel like they're gonna have to pay more and I understand your, your needs to pay for that. So I'm trying to wrap my head around what's really happening. Why is it not necessary for adults that escape in the same instance? So I'm just-- could you, could you give us your perspective on a couple of those things?

DAN SCHLEUSENER: Yes, Senator, I'd be happy to.

PANSING BROOKS: Thank you.

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DAN SCHLEUSENER: And a, a sampling of eight YRTC male youth that were housed at the Buffalo County jail over the course of the last three years for either a charge of escape or assault that occurred on YRTC campus, those eight male youth accrued an additional 17 felony charges while in the Buffalo County jail, either for inmate-- or inmate-on-inmate assaults within the jail or inmate-on- staff assaults. We've had numerous in-- YRTC youth assaulting county correctional staff that's, that's resulted in broken bones, one suffered a broken neck. They also-- two additional, two additional misdemeanor charges were, were also filed after they had come to the Buffalo County jail for destruction of property. They also-- three-- we resulted in three substantiated PREA violations, the federal Prison Rape Elimination Act, from, from those eight youth and one required safekeeping with the Nebraska Department of Correctional Services after he had assaulted staff. And it was determined that it was better for that youth to be at the Nebraska Department of Correctional Services through that safekeeping program.

PANSING BROOKS: OK. So, so-- thank you for that. So these youth are not just sent back to the YRTC, they are kept in the jail until they're further charged for these additional felonies and misdemeanors?

DAN SCHLEUSENER: It, it depends, it's on a case-by-case basis for each youth. But some youth are held in a pretrial status at our facility. Senator Murman referenced 2019, we had 432 total days; 2018, there were 9 youth for a total of over 1,000 days that were held in Buffalo County.

PANSING BROOKS: OK, I-- I'm still-- I'm just surprised by this a little bit. I, I think I didn't realize that some of this was happening. And on, on those 17 additional felony charges, did, did those charges include the charge of escape?

DAN SCHLEUSENER: No, those were-- those 17 felony charges were only new additional charges that occurred after they came to the Buffalo County Jail.

PANSING BROOKS: OK. And has there been no other attempt to try to put them back into the, into the YRTC or-- it doesn't, it doesn't make sense to me why they're not going back to YRTC.

DAN SCHLEUSENER: There are in some instances, they are given what's called a PR, personal recognizance, bond--

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PANSING BROOKS: Yes.

DAN SCHLEUSENER: --for their charge that they incurred while at YRTC. The county attorney in conjunction with the county judge can PR bond them. In that instance, they are sent back to YRTC. I don't have the numbers of how many of those that were sent back under that circumstance. I, I had collected the numbers of the ones that were determined for their, for their safety, for the safety of YRTC, or the safety of the community, they were not granted PR bonds and were required to stay at the jail.

PANSING BROOKS: OK. If by chance you could get those numbers, I'd really like them at some point. I just think-- I'm very interested in this. Thank you very much

DAN SCHLEUSENER: Um-hum.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Chief Deputy, for testifying today. You've had your hands full this week, haven't you?

DAN SCHLEUSENER: Yes.

BRANDT: One thing we have coming on-line next week is the new Lincoln YRTC, that I hope will help your situation out there with some of the problems that you're experiencing in that I'm guessing maybe some of the, the people that you have in your jail can be transported to Lincoln to not be in your jail. So this bill is about a, a funding problem. Is that just with the YRTCs not giving reimbursement, reimbursement or also the Department of Corrections?

DAN SCHLEUSENER: That I can think of, there's been no instance where there would have been a-- for the purposes of this bill, I can't think of anything where the Department of Correctional Services would fit for reimbursement to the Buffalo County.

BRANDT: OK. Does Buffalo County have a juvenile detention facility or do these-- the, the kids in the YRTC, do they tie up an adult cell when they're incarcerated?

DAN SCHLEUSENER: They tie up an, an adult cell in the, in the jail. There is no juvenile facility in Buffalo County.

BRANDT: So then does that knock out four spaces with one, one person or just one space for one person when you have a under age?

DAN SCHLEUSENER: It depends on the classification of the youth. Typically, if they're coming to, to the Buffalo County jail and not going back to YRTC they're gonna to be classified on the higher end. So that requires more restrictive housing with other adults of that same classification. So it depends, sometimes, yes, it may be one spot for one person or it could be tying up a two-cell person-- a two-person cell.

BRANDT: OK. And because Geneva is in my district, I'm very familiar with what happens here. What happens is that we have individuals in a state facility that have to be housed in a county facility. And then the county is on the hook for these costs. It's the exact same thing that Fillmore County was seeing with the girls there. And you probably have a, a larger problem because there's about three times the boys population as opposed to the girls. And then some of the other things that are going on in Kearney. Is this bill gonna fix the problem that you're having?

DAN SCHLEUSENER: If, if it's determined that we will-- we'll keep it go down the way it's been, been occurring where we're required to house YRTC staff in the jail, it would help alleviate the problem. The ultimate goal is these youth don't belong in the Buffalo County Jail or any county jail. County jails are ill- equipped to-- they are an adult facility. And these youth are charged as adults. Therefore, we can, we can house them. But we're, we're ill-equipped for programming. We don't have the programming for, for these youth. Staff-- we already have a high population of our own adult inmates. And just as anywhere else, we do have-- we have staff turnover. So ultimately, we would rather not have the youth in our jail. But if that is to continue this, this would help alleviate some of that cost to Buffalo County.

BRANDT: And Senator Murman indicated that one of these individuals had been there for 280 days. Is that correct?

DAN SCHLEUSENER: The one, when I had prepared those numbers, he had been in there for 235 days in 2019. He was sentenced last, last Friday to a term of not more than nine years in the Department of Correctional Services. So he is no longer with us.

BRANDT: So maybe a better statute would be to say that a YRTC cannot remain in a county facility more than 15 days or 30 days and put a date certain on the amount of days that they could be housed there.

DAN SCHLEUSENER: I would just-- my, my initial thought of that would be they've come to us for a reason, they're either violent,

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assaultive. There would have to be a place, something in line after that term has been met for them to go to. It would have been determined that YRTC may not have been that place. And it would just-- I think it would be in the interest of safety of the community of that youth, they would-- there would have to be a place for them to go after that.

BRANDT: All right. Thank you.

LATHROP: Deputy,--

PANSING BROOKS: I have one question.

LATHROP: OK. Senator Pansing Brooks

PANSING BROOKS: Do you have an-- have you seen the fiscal note? Thank you, Chairman.

DAN SCHLEUSENER: I have not.

PANSING BROOKS: OK. I just-- I'm just surprised it's so low because seems like if we're going to-- I mean, what did you-- what do you-- you're, you're wanting to care for the, the kids, but you're also talking about some programming or are you not really? What is it that you need to do differently to better house those kids if they're coming to you? Or are you just wanting to get paid for the food and the, and the--

DAN SCHLEUSENER: The, the reimburse--

PANSING BROOKS: --lights, lights and water?

DAN SCHLEUSENER: Pretty, pretty much that, the staff and the overhead. The, the rate that the, the state charges us for our safe keepers with them is, is \$89 a day plus medical. That pretty much just covers the, the staff, the time. I can't-- I would-- I can't speak for Sheriff Miller as far as if there would be a request for increased programming to help fund that. These numbers aren't based on that, it's just basically the overhead and staff.

PANSING BROOKS: Well, for 200 and-- how many days, 235 days, they should be having some programming. So I just-- I think it's amazing. And also, you probably should ask more-- for more because we all know it costs more to house children than it cost to house adults. So anyway, thank you. Thank you, Chair.

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LATHROP: I do want to clarify a couple of things about your bill. Is it the fact that-- let me run a couple scenarios by you, you get a call and you run out to the YRTC because there's a disturbance, you take a kid back because they've been involved in an assault. Do you want reimbursement for the time that young person spends in your jail?

DAN SCHLEUSENER: In, in a pretrial status. If the judge is to sentence them, if they're sentenced for a crime committed in Buffalo County and they're sentenced to our jail, that would not-- we would not ask for reimbursement on that.

LATHROP: OK, this is all pretrial release,--

DAN SCHLEUSENER: Yes.

LATHROP: --which is an answer to one of my questions. If the offense happens at the YRTC and their pretrial detained in your jail, you want reimbursement. What if the kid escapes, he's at McDonald's and he beats up a cashier there? Is it the status of the person as a YRTC committed person who commits a crime in your county, is that, is that how we determine who we're going to reimburse you for?

DAN SCHLEUSENER: It would be my belief, yes, if the, the status of that youth if they are, if they are off campus and as you referenced to the furlough or a visit off campus and, and commit a, commit a crime, the status of the youth, yes.

LATHROP: So anytime somebody commits a crime in Buffalo County and they have-- immediately before they committed that crime been housed at the YRTC in Buffalo County, you want to be reimbursed for the time they spend in your jail and unless it's post-conviction?

DAN SCHLEUSENER: Yes.

LATHROP: OK, got it. I don't see any other questions, but thanks for being here today.

DAN SCHLEUSENER: Um-hum.

LATHROP: Oh, I'm sorry, Senator Morfeld.

MORFELD: Thank you for coming today. I guess for me and maybe you don't look at it this way, but I, I see if-- one, there should be some kind of reimbursement. I don't argue with that as a baseline, but is this going to remove incentive for counties to get them to the YRTC

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and or, or the courts for that matter to facilities that are equipped to work with young people on youth development?

DAN SCHLEUSENER: I would say, no, because as Senator Pansing Brooks stated that \$89 is, is a cheap date. It is-- the juvenile offenders require more staff, staff to inmate ratio. Typically adults, it's recommended anywhere from three to five per adult inmate; youth, I've seen anywhere from eight to ten youth per staff-- staff per youth, excuse me.

MORFELD: OK.

DAN SCHLEUSENER: It's, it's proven that juveniles require more, more supervision. They're the-- in these, they're they're less mature. They've shown violent tendencies. So it's-- we're not making money off this, and we're not looking at it as a, as a money maker. It is our goal in every YRTC youth that we house is to get them back to YRTC to get the programming that we don't provide at, at the adult jail.

MORFELD: OK. Thank you.

LATHROP: You know sometimes when we get somebody here we have questions for them that might not be exactly directly on the bill. So I'm gonna ask you this, were you involved in responding to these four youth that took the bed apart and assaulted staff?

DAN SCHLEUSENER: No.

LATHROP: That was all State Patrol?

DAN SCHLEUSENER: No, the Kearney Police Department, Buffalo County Sheriff's Office responded initially, then the Nebraska State Patrol then took over after their arrival.

LATHROP: So you weren't-- your, your agency wasn't involved in any of-- in responding to any of that?

DAN SCHLEUSENER: Oh, yes, yes, all three of those agencies were involved.

LATHROP: Were you out there yourself?

DAN SCHLEUSENER: I personally was not.

LATHROP: Here's a question I have, four kids are in a dormitory in one of the housing units and they manage to take a bed apart and turn

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parts of the bed into a weapon and then assault staff, is that basically what took place?

DAN SCHLEUSENER: That's a fair statement of what occurred, yes.

LATHROP: Do you know how, how these young people had an opportunity, enough of an opportunity to take a bed apart and turn the parts into a weapon without somebody intervening before that ever took place?

DAN SCHLEUSENER: That may be a better question respectfully for the Health and Human Services.

LATHROP: Well, I've actually run that by them, but I'm asking you if you're one of the people that showed up or your agency showed up, do you have an answer to that? I mean, I can't imagine you can take a bed apart and turn the pieces into a weapon in, in 30 seconds, right, there's supposed to be staff there supervising these kids?

DAN SCHLEUSENER: I would say that that would be a safe or fair assumption that that should be occurring.

LATHROP: Yeah, and do you know how long it took to take the bed apart and turn the parts into a weapon?

DAN SCHLEUSENER: I do-- I cannot speak to that.

LATHROP: OK. I appreciate your answers to my questions. I don't see that prompted anymore. Thanks for being here today, Deputy.

DAN SCHLEUSENER: Thank you.

LATHROP: Anyone else here as a proponent? Anyone here in opposition to LB978? Anyone here to testify in a neutral capacity? Seeing none, Senator Murman, you may close. And as you approach, we have a letter of support from the Lancaster County Board of Commissioners that will be noted for the record.

MURMAN: I just want to reiterate that the most absolute, most important thing is that individuals should be receiving their programming in the Youth Rehabilitation and Treatment Centers. The programs and treatment services at the YRTC are required to be based on an individual or family process. The programming's main goal is for reentry of the juvenile into the community. With the reimbursement at the city and county level, it's just another drop in the bucket for property tax relief. Any questions?

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LATHROP: That's your close? All right.

MURMAN: I'm sticking to it.

LATHROP: Sticking with it, too. OK, well, I can see where it would provide some property tax relief. OK. Thanks, Senator Murman. That will close our hearing on LB978 and bring us to LB1082 and Senator Morfeld. Welcome, Senator Morfeld.

MORFELD: Chairman Lathrop, members of the committee, for the record, my name is Adam Morfeld, that's A-d-a-m M-o-r-f as in Frank -e-l-d, representing the fighting 46th Legislative District here today to introduce LB1082. I introduce LB1082 on behalf of the Commission on Public Advocacy. LB1082 would increase the court fee on all cases filed in Nebraska courts from \$3 to \$4, raising approximately \$300,000 to help fund the operations of the Commission. The Commission on Public Advocacy was founded in 1995 with the purpose of providing indigent defense counsel for certain crimes, thus saving counties taxpayer money. In 2005, ten years after the bill creating the Commission was passed, a bill was introduced to make the Commission Cash Fund funded via court fees. Since then, the fees have not been raised and the court filings have decreased significantly, thus impacting the Commission's budget and ability to adequately fulfill its mission. And somebody from the Commission will be behind me with some numbers and some context into that. Since its inception, the Commission has represented many indigent clients providing expertise and defense counsel. I urge your support of the good work of the Commission by your favorable consideration of LB1082. I'd be happy to answer any questions. And as I noted, somebody from the Commission will be behind me to provide a little bit more context and detail into their budgetary situation.

LATHROP: OK. Senator Brandt's got a question for you.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Morfeld, for bringing this bill. Are these fees today being used for this, the \$3, is that be used for indigent defense?

MORFELD: Yes.

BRANDT: And we're just raising it \$1 just to generate more of an income stream?

MORFELD: Correct.

BRANDT: All right. Thank you.

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MORFELD: Yep.

LATHROP: I don't see any other questions.

MORFELD: Thank you.

LATHROP: Thanks, Senator Morfeld. Can I see by a show of hands the number of people that will testify on this bill? Get them up there, let's see them. Looks like three. Can you alert Senator Cavanaugh? You may come forward, proponents of LB1082. Good afternoon.

TODD LANCASTER: Good afternoon. My name is Todd Lancaster. I'm agency legal counsel for the Commission on Public Advocacy. I'm here in support of Senator Morfeld's bill. Chief Counsel Jeff Pickens would like to be here for this bill, but he's currently working on a first degree murder trial in Beatrice. I provided the, the committee with some information and some written notes. So I'm just gonna briefly summarize some of the situations we have. As was stated, we are created in 1996 after the case of Lotter and Nissen in Richardson County. The cost to the defense bill for that kind of put that county in a really bad financial situation. So we were created to go to counties such as Richardson County to represent criminal defendants in capital cases and other serious crimes of violence cases. We do that free of charge to the counties, and that covers everything from trial expenses to expert expenses, depositions. The county pays nothing. We pay everything for the defense. Since 1996, the Commission has provided tax relief by representing criminal defendants in counties throughout the state of Nebraska from Scotts Bluff to Douglas County and every place in between. There's a map in the materials that kind of-- that it represents all the counties we've done that in. We are currently representing clients in 20 counties in Nebraska, 2 people that are on death row, we're doing appeals for. We are preparing for a death penalty case in Saline County. We represent 15 other people that's charged with first degree murder, 2 people charged with secondary murder, 1 person charged with child abuse resulting in death. Two of those are juveniles charged with first degree murder. And by statute, they have to have evaluations by experts in adolescent brain development. Obviously, that's very expensive to get done, but it's something we have to do by statute. First degree murder cases obviously cost lots of money because of experts; same with child abuse resulting in death. And as well as sexual assault cases. We currently represent eight people in eight different counties charged with either first degree sexual assault or first degree sexual assault of a child. As stated, our, our fees-- or our revenue comes strictly from the \$3 fee. And it's not been raised since-- for the last 15 years. The

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county court cases and court cases in general have been decreasing in the last 10 years or so, down by about 126,000 while our expenses keep increasing. And I provided some information, some tables showing our revenue stream and our expense streams. We believe that the \$1 fee increase will allow the Commission to keep supporting-- or keep representing people in these counties and saving counties money that will allow us to hire another attorney so we don't have to keep turning down cases that aren't homicide cases, which we are doing at this point, although we've never turned down a murder case as long as I've been at the Commission or ever I believe and we never will. Again, we've, we've been not getting as much money as we've been spending. We've had a cash fund that at one point was over \$1 million. It's down to approximately \$581,000 at this point. Without this fee increase, we won't be able to keep operating at the level we are now. And it's our hope that we can keep doing that to support counties with, with tax relief by representing criminal defendants in, in those serious cases. I'll take any questions that the committee has.

LATHROP: Can I ask just a couple sort of quick questions? Do you guys get involved in counties just in conflicts?

TODD LANCASTER: No, we, we will be appointed to cases in any county. The judge can call up and say, we have this case, we want to appoint you and we'll take those cases. There are homicide cases where there are multiple defendants. Well, we will take codefendant, particularly in counties that have a public defender, say Lancaster County, Douglas County, Sarpy County, where the public defender will take one client and then we will usually get appointed to the, the second person that's charged.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you for appearing today. So I represent some of these counties on the list and I'll use Jefferson County as an example. So we have a homicide case in Jefferson County, if they call you up, is there a charge to the county?

TODD LANCASTER: There is absolutely no charge to the county from the Commission. We are appointed. We have experienced lawyers that go down there. Any expense to the county-- or for the expense for the defense of those people are all paid by the Commission, so the Commission doesn't charge the county anything for our representation.

BRANDT: This looks like a really good deal for these small-- I understand these small counties do not have the resources,

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particularly on these homicide trials where you have multiple defendants and we probably know which one we're talking about. So why wouldn't the judge always call you guys because otherwise we're gonna have to use county funds to appoint a defense attorney. Would that be a correct statement?

TODD LANCASTER: That's, that's correct. I'm not the judges so I couldn't tell you exactly. Obviously, counties that have a full-time public defender's office would be able to handle a murder case, generally. If there's a conflict, then we would take the second person. In smaller counties that don't have a full-time public defender's office, that perhaps has part-time public defenders or just attorneys that would be appointed to take cases, often judges will appoint them. We don't know why they don't appoint us. It's happened that we have been getting more appointments on homicide cases throughout the state of Nebraska recently. So I think the judges understand that now.

BRANDT: So to put this into perspective, if, if you guys did not provide this service on a typical homicide case in a typical, typical small county, what would it cost that county to hire a, a defense team or an attorney to defend that, that individual at the going, going rate? Just an approximate guess.

TODD LANCASTER: Sure. I, I, I can't give you an exact number because every case is different and the facts are different. I believe in most counties, attorneys appointed to represent criminal defendants in felonies, I think they get like \$100 per hour for court time and \$85 for noncourt time. That varies from county to county. Obviously, if it's a first degree murder case, there's a lots of time you have to put into the case. I, I can't give you an exact number, but it's-- it would be in the tens of thousands of dollars, obviously, to represent somebody-- have somebody paid to represent a criminal defendant in a murder case if it's not us.

BRANDT: All right. Thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for coming today. I appreciate it. I-- as, as you may know, I have a right to counsel bill right now that also increases a dollar fee, which we've got an agreement by a lot of different parties on that. Do you ever handle juvenile cases? I'm just trying to clarify.

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TODD LANCASTER: We don't-- we do not handle juvenile cases.

PANSING BROOKS: So, so who-- so if there's a county that doesn't have a public defender-- I just want to clarify, you guys don't come in and they have an indigent child, who's handling that?

TODD LANCASTER: The only way we would come into a county to represent a juvenile is if they're charged with an adult offense. As I mentioned, we have two now. If it's just a strictly juvenile case, and there's not a public defender's office, then the county either has a list of people they will appoint to represent, you know, juveniles in juvenile court or they may have a contract public defender that would take those.

PANSING BROOKS: Oh, OK, so I want to just clarify, so just for the record, so we would be creating a, a juvenile indigent defense fund with your-- I, I think you're aware of that.

TODD LANCASTER: I'm aware that-- of your bill and that,--

PANSING BROOKS: Yes.

TODD LANCASTER: --that the Commission would be tasked with administrating that-- those services, yes.

PANSING BROOKS: Yes. So-- right-- so those would be extra funds to allow counties to help pay for that juvenile indigent defense. Is that correct? I'm just--

TODD LANCASTER: That's my understanding, yes.

PANSING BROOKS: Yes. So I, I just wanted to make clear for committee members who are sort of like in the world of wondering whether or not this is really a good idea or not. It is important because otherwise the counties are going to be paying for it out of their own pocketbooks.

TODD LANCASTER: Yes, Senator. And as you know, any time you appoint an attorney, whether it's a juvenile case or a felony case or a murder case, people have a right to effective assistance of counsel and somebody's got to pay for it and it's the counties usually and--

PANSING BROOKS: Yeah, I, I wish you could--

TODD LANCASTER: --we, we come in to take care that for the counties.

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PANSING BROOKS: --tell some of the senators that. But some people don't understand the constitution. But anyway, I really appreciate your thoughts on that. And I had one more thing I was just thinking about. I can't, I can't-- I'll think of it in a second. Thank you.

TODD LANCASTER: Sure.

PANSING BROOKS: Thank you very much for coming.

LATHROP: I don't see any other questions, but thanks for being here, Mr. Lancaster.

TODD LANCASTER: Thanks for having me. Thank you.

LATHROP: Next proponent of LB1082. Good afternoon.

ELIZABETH NEELEY: Good afternoon, Senator Lathrop, members of the Judiciary Committee. My name is Elizabeth Neeley, E-l-i-z-a-b-e-t-h N-e-e-l-e-y. I'm the executive director of the Nebraska State Bar Association and I'm here today in support of LB1082. Just outcomes in the criminal justice system require capable counsel for both the prosecution and the defense. The Commission on Public Advocacy plays an important role in our criminal justice system. When defendants are charged with the most serious offenses, judges have the ability to appoint the Commission to both make sure that that defendant receives a competent defense, as Mr. Lancaster indicated, there are some counties in Nebraska where maybe there's a lack of lawyers or a part-time public defender where there's no one that's really qualified to take that serious level of offense, but also to protect counties from incurring staggering legal fees associated with those trials. The Commission is funded by court filing fees. In December of 2019, I attended a Judicial Resources Commission hearing that discussed filing trends in Nebraska. And I've provided you with a table from the administrative office of the court that shows the historical filing fee-- or filing trends for district county in juvenile court. And I think the first page is the most striking for county court cases. So just from 2010 to 2019, the number of cases has dropped significantly: 2,252 fewer cases in district court, 95,316 fewer cases in county court, 1,942 fewer in juvenile court. So simply put, given the drop in court filings, the \$3 per filing fee that's been in place doesn't go as far as it used to. And this adjustment from \$3 to \$4 is necessary. The services provided by the Commission provide property tax relief to counties who would otherwise bear the expense of all of these legal fees. Not adequately funding the Commission on Public Advocacy will

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limit the cases they can accept moving forward and shift those costs back to the counties. Happy to answer any questions.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming, Miss Neeley.

ELIZABETH NEELEY: Yes.

PANSING BROOKS: I guess I, I remembered what I was thinking about was that, that if a, if a child-- if a juvenile is transferred to adult court, they can't waive counsel. So that money is, is being charged back to the counties as it is right now. So I'm, I'm in support of increasing these fees for the Commission, the work that they do across our state is viable for some of the-- as Senator Chambers says the last, the lost, and the least, may not be in that order but anyway, I, I just-- again, we have to do this for people to be represented and have access to justice,--

ELIZABETH NEELEY: Absolutely.

PANSING BROOKS: --including our juveniles who are now being paid for totally by the counties. So--

ELIZABETH NEELEY: Thank you.

PANSING BROOKS: Thank you.

ELIZABETH NEELEY: Other questions?

LATHROP: Thanks, Liz.

ELIZABETH NEELEY: Thank you.

LATHROP: I don't see any more.

ELAINE MENZEL: Chairman Lathrop and members of the Judiciary Committee, for the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l. I'm here today on behalf of the Nebraska Association of Counties and has-- as has been previously testified, this bill was in part introduced to address property tax concerns of the counties and certainly to address legal representation of individuals. This, as was identified by Senator Morfeld, I believe, was in part because of Senator Slama's district at the time, Richardson County, having multiple death penalty cases. And that was one of the packages of bills that came apart-- came to the Legislature to address property

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tax. In fact, the legislation-- or the statute is known as County Revenue Assistance Act. I think as was previously testified by the Public Advocacy Commission, it is important to note that this is used throughout the state. So it is helpful in that respect as well. If there's any questions, I'll be glad to attempt to answer them.

LATHROP: I do not see any questions.

ELAINE MENZEL: Thank you.

LATHROP: Thanks for being there. Anyone else here to testify on LB1082 as a proponent? Anyone here in opposition to LB1082? Anyone here in a neutral capacity? Seeing none, Senator Morfeld, you may close. We do have a neutral letter from Andrew Maschmann from the Nebraska Collectors Association.

MORFELD: Sounds like consent calendar. So I-- all I want to say is, is that this is not that big of an ask. In fact, I was surprised that we weren't gonna be asking for more, because I do think that there are prob-- this is gonna be a continued downward trend in court filings. And to be honest with you, that's not necessarily a bad thing, more people are doing mediation, other alternative forms. But, but at the same time and by the same token, we have to make sure some of these agencies that are fee-based have adequate funding to do their job because otherwise there's other consequences down the road. So I would appreciate your support of this. And if we can find a vehicle for it somehow, I think that would be useful.

LATHROP: OK. I don't see any other questions. That'll hold-- that'll complete our hearing on LB1082 and bring us to the next bill, Senator Cavanaugh and LB1171. Senator Cavanaugh, it looks like we have a few people leaving and we'll give them a chance to. All right, Senator Cavanaugh, you may open on LB1171.

CAVANAUGH: Thank you, Chairman Lathrop and members of the Judiciary Committee. My name is Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, and I represent District 6, west central Omaha, here in the Nebraska Legislature. I'm here today to introduce LB1171, which will ensure that nursing women who are, who are residing at the Nebraska Correctional Center for Women at York and youth at the Rehabilitation and Treatment Centers, make reasonable-- that reasonable accommodations are made for these women to breastfeed or express milk for their infant. It also seeks to keep mothers and their infants together whenever possible. Between 5 and 10 percent of women who enter prison or jail do so while pregnant with an average of 2,000

babies born to pregnant, incarcerated women each year across the country. Two-thirds of incarcerated women are parents to children, and three quarters of them are imprisoned for nonviolent offenses. At the same time, children of incarcerated women only remain with the other parent in the-- in a quarter of cases. Combine this with how pivotal the early years of life are to shaping a child's course through life, and the effect of the separation and destabilization is devastating. I'm introducing an amendment that I believe you have to clarify the original intent of LB1171, and it removes county facilities from the bill. I, I decided to introduce this bill after visiting York's Penitentiary nursery program and the YRTC-Geneva's parenting suite. Through these visits, it came to my attention that the state has not been utilizing these facilities and resources to the maximum availability of capacity. My bill intends to remove artificial barriers in the form of qualification restrictions for women and babies staying together. Additionally, if a woman, woman does not qualify for the nursery programs but wishes to express milk for her child, LB1171 ensures reasonable accommodations are made for breastfeeding, breastfeeding and expressing milk for their children. Breast milk has numerous and well-documented health benefits for both the mother and child, such as low rates of diabetes, shared antibodies, and strengthening the bond between the two. It should be encouraged and available whenever possible. In 1994, the nursery program at the Nebraska Correctional Center for Women in York was-- has allowed-- since then, it has allowed pregnant and new mothers at the NCCW to live with their babies if they meet certain program criteria. A UNK case study of the program found 28 percent reduction in women returning to prison within three years. According to the study, the nursery pro-- program achieved cost savings of more than \$6 million for the period of 1994 to 2012. A UNO study found that participation in the program-- parenting program had a significant positive effect on inmate mothers contact with their children. A survey of the nursery program participants indicated that 95 percent of respondents felt they had a stronger bond with their children as a result of the nursery program. Due to the restrictive selection process for the nursery program at York, even though it has a capacity of 15 people, it is never at full capacity. In addition, only women in the nursery program can breastfeed, and those not in the program are not allowed to pump because there is nowhere to store or send the milk. Finally, there is no formal written policies regarding-- relating to breastfeeding in Corrections, which means there is no information about lactation policies for women who are not accepted into the nursery program. By passing LB1171, means we are going to have healthier babies and lower recidivism above-- among mothers and

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proven cost savings. I would like to speak to the fiscal note, which is rather long. So part of the fiscal note, I believe, comes from the counties and I've spoken with the counties that they will be removed from this bill. There was not an intention to require anyone to build a new facility. We have a facility at Geneva for a parenting suite where a mother, and there's usually only one or two mothers a year in Geneva that have a newborn with them, so that parenting suite should be sufficient. And at York, this does not require that they go over their capacity of 15, 15 is the capacity and they can make their decisions accordingly. It just removes the current restrictions that they have for who qualifies for the program so that they can open it up to all expecting or new mothers and consider them on a case-by-case basis as to whether or not they should participate in that program. It also allows for pregnant women to stay in the nursery pro-- program area if there are available beds. So it, it will actually potentially free up space in the general population, if we are moving women into the nursery program early-- prior to having their baby, their newborn with them. Additionally, the department has in their fiscal note funds for use utilizing the 15 beds. Our Appropriations Committee appropriates funds for the Corrections facility to utilize all 15 beds every year. So those are funds that have already been appropriated. So I hope that I can work with the department to fix that fiscal note. So with the amendment, the fiscal note will be significantly different and it won't cause additional facilities to be built and shouldn't cause Corrections and HHS to hire additional staff for the York, it may cause for additional staff at Geneva. With that, I will take your questions.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Cavanaugh, for bringing this bill. Maybe this is sort of a, a nitpicky, little technical thing, but now that we have girls at Kearney, we will have girls at Lincoln, wouldn't it be appropriate just to strike Geneva and just any YRTC facility?

CAVANAUGH: Well, I appreciate that question. So Kearney and Lincoln do not have appropriate facilities for a baby. Geneva is the only current facility that we have that has the appropriate facilities for a baby. It has everything. It has a kitchen. I think you've seen it,--

BRANDT: Yes.

CAVANAUGH: --it has a kitchen. It has a crib. It has a toddler bed. So it really is the most appropriate placement if there is a baby that's

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going to be staying with the mother. Additionally, Geneva is the only facility that is exclusively for girls. So that is where I would think that the department would ultimately want to place a new mother. It doesn't really speak to Lincoln or Kearney because that-- those aren't appropriate placements. If the department wanted to explore those as appropriate placements for a baby, I'd be happy to talk to them about that.

BRANDT: Right. And I would agree with you wholeheartedly. I just didn't want,--

CAVANAUGH: Right.

BRANDT: --want you to get boxed in if, if something would happen to Geneva, and that option wasn't available, you will have some of these individuals at YRTCs that are pregnant or have babies at the other facilities and, you know, rather than have to come back and change the law.

CAVANAUGH: Well, and also with, with the youth that are in the YRTC there is an opportunity here for the YRTC-- for DHHS to work with the courts and, and see if there's an opportunity to, to put that girl in a different placement outside of the YRTC system once the baby is born, there's nothing requiring her to stay necessarily. So I think this is a great opportunity for us to discuss what we're doing with our parenting youth in the detention center-- or the rehabilitation center.

BRANDT: All right. Thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you, Chairman. Thank you for bringing this, Senator Cavanaugh. The statistics nationwide show that women are getting arrested at a faster rate than men right now. And our numbers are going up. So this bill is significant. I, I also am concerned about what Senator Brandt said and wondered if we might put, and then shall not be allowed to be at-- or at Kearney and York or something. I mean, we have, we have to figure out something. And if, if, if the-- if DHHS wins on this whole thing where they've just move through and changed everything without really any input from the Legislature, then we've got to do something to protect these women. And if we have to wait another year for that, that's disconcerting to me. So just throwing that out.

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CAVANAUGH: It's disconcerting to me as well. And I have a great deal of concern about having girls and boys together at Kearney,--

PANSING BROOKS: Do, do, too.

CAVANAUGH: --especially with the increase of incidences happening at Kearney. And I am very concerned about what those incidences indicate as far as the safety and care of our children, these are children in the care of our state. I don't, I don't think that it's necessary to prescribe it in this bill, though I would be happy to. I do think that we, as a Legislature, will be prescribing other things in the coming weeks as it pertains to the YRTC. But I am happy to prescribe it in this bill.

PANSING BROOKS: Well, it's just making sure that we are protecting those and, and--

CAVANAUGH: Yes.

PANSING BROOKS: --protecting our children and our children's children.

CAVANAUGH: Yes.

PANSING BROOKS: So thank you.

CAVANAUGH: Thank you.

LATHROP: Senator Slama.

SLAMA: Hi.

CAVANAUGH: Hi.

SLAMA: Thank you, Senator Cavanaugh. This bill brings up an interesting concept and it builds, I think, off of your bill last year on the restraint of pregnant inmates. So thank you for your work on that front. I just had a couple of questions about the bill. First off, so just to help me understand this, are we talking all infants age 24 months and younger staying with their mother-- birth mothers as long as it's not an expressed danger to them? Is that correct?

CAVANAUGH: So the current program at York allows women to have a child there and they have the facilities appropriate for a child up to age 24. However, they don't allow-- you automatically can't apply for the program if, say, your child is going to be four or five when you are determined to be released. So this says if you have a newborn, you

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come into Corrections and you're, you're pregnant, let's say, and you have a newborn when you're there, and you would otherwise qualify for the program, but you're gonna be there for more years that disqualifies you. This means you qualify, and there's space, we'll put you in there, you'll have your child with you for two years, but your child will age out of the program.

SLAMA: Sure. Yeah, I'm just reading this is any child 24 months or younger shall be automatically enrolled in the program unless it's deemed to be a danger to the child.

CAVANAUGH: It's-- so-- and I can get a copy to the whole committee. There is an outline of what constitutes eligibility for the program. So this just eliminates some of those restrictions. But it doesn't eliminate that you still have to apply for the program and be, be deemed suitable and eligible or appropriate for the program.

SLAMA: Sure. So given your knowledge of the eligibility requirements of the program, I do have a hypothetical, and it's not a hypothetical, it's a real situation that a few people in my district are in where we have a law-abiding father who, by all means, is an outstanding dad and the mom ends up in prison, involved with drug use in some cases and others it's other petty crimes. This bill, as I'm reading it, and you can correct me if I'm wrong, would be taking that child age 24 months or younger from that law-abiding father who, by all means, everybody considers is the best place for that kid to be with to be with the mother in that correctional facility.

CAVANAUGH: Sure. So that is not the intent. Oftentimes, and, and I'm happy that there is definitely a good exemption to this, oftentimes, these are single mothers or their father is not, not a good person to have the child with, the child would be placed in foster care or with a kinship care. But if-- parental agreements have to be worked out as well, because a father's rights do not dissolve just because a mother is incarcerated, the father has a right to that child as well. And if the father wants to pursue that, that would be part of this whole process. So this does not do anything in the way of a father seeking his rights to have his child with him. So it would not supersede any sort of parental agreement or court order agreement that a child is placed with their father.

SLAMA: Even with the shall in the statute, the--

CAVANAUGH: Well, they shall make the accommodations whenever possible. But a document, a document saying the courts have decided that the

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child should be placed with the father would be appropriate documentation in my mind. I'm happy to work on that language to make it more clear, but it is not the intention to put a baby in a bad situation.

SLAMA: And also, just to clear things up. Is there a program-- and now we talk a lot about jamming out in our prison system. I have some similar concerns with this bill that when the child turns two, they're going back out in the system. I can see that being very emotionally traumatic for a child and the mother.

CAVANAUGH: Sure. So it-- I did not prescribe the transition period in here because they do have a parenting program manual and this, this bill would really be in effect having them update this manual. And they work with Sixpence. They have, they have some grants. They work with some great organizations here in Nebraska on pro-- children programming, and they already have to find a suitable placement for a child no matter the age. So this would just be giving them that time while the child is in the program with their mother to find a suitable placement. So I would assume, I didn't put that into statute, but I would assume that their program would regulate how they do that.

SLAMA: Thank you.

CAVANAUGH: And I would hope that they would.

SLAMA: All right. Thanks.

LATHROP: OK. I don't see any other questions. You will stay to close?

CAVANAUGH: Yes.

LATHROP: OK. How many people intend to testify on this bill? One-- raise your hands high so I can see them. OK, two, four, six. OK. We will take proponent testimony. Thank you. Welcome.

SCOUT RICHTERS: Thank you. Thank you. Hi, my name is Scout Richters, that's S-c-o-u-t R-i-c-h-t-e-r-s, here on behalf of the ACLU of Nebraska. First, we wanted to thank Senator Cavanaugh for bringing this bill because women and girls in the prison system and in the juvenile justice system are all too often overlooked and overshadowed in our larger conversations about prison overcrowding and the crisis in our prison system. But it's really important that we not overlook this population because we know that there has been a 700 percent increase in the female, female jail and prison population between 1980 and 2016. The ACLU has worked to ensure that for those who choose to

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breastfeed or pump breast milk that they're able to do so, whether that be at work or at school or in places of public accommodations. And in support of that work, we completed open records requests to Lancaster County Jail, Douglas County Jail, and the Department of Corrections to obtain those policies, the lactation policies applicable to prisoners in the fall of 2018. What we received, Department of Corrections sent policies that were applicable only to those in the nursery program at York, Lancaster County sent emails about accommodations they had made in specific instances but had no formal policy, and Douglas County indicated that they had no responsive documents or policies. And as you can see in my written testimony, I shared the experience from a mom who was forced to hand express and then dump her breast milk, which hurt her supply and forced her daughter to go without breast milk, breast milk while she was housed in the Douglas County Jail over a weekend waiting to see a judge on Monday. So ensuring that the Department of Corrections and YRTC's facilitate breastfeeding or pumping is really an important first step, but ultimately including jails in that requirement for lactation accommodations is extremely important because this is where short-term placements occur and given the relatively large number of women who are in jails at any one time. Finally, we want to acknowledge that placing infants with their incarcerated mothers is a means to keep families together during critical times in infant development. But we do need to be clear that we need to be focusing on incarcerating fewer people and incarcerating fewer women, not putting more babies behind bars. We know that women are largely in prison for nonviolent offenses. And so we know we really encourage the focus to be on alternatives to incarceration. So with those comments, we offer our support of the bill. And I'm happy to answer any questions.

LATHROP: OK. Thanks for being here, Ms. Richters.

SCOUT RICHTERS: Thank you.

LATHROP: I don't see any questions at this time.

SCOUT RICHTERS: Thank you.

LATHROP: Next proponent.

JULIET SUMMERS: Good afternoon, Chairman Lathrop, members of the committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here on behalf of Voices for Children in Nebraska to support LB1171. Every child deserves to experience healthy, loving relationships from the moment of birth. And every young mother deserves the supports we

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can offer to foster and sustain that relationship. Teenage parenting can be hard enough to navigate, but successful teenage parenting becomes nearly impossible when youth are involved in systems that actively prevent them from bonding with and learning how to care for their infants. To this end, I'm here today on behalf of Voices for Children to support the provisions of this bill specifically that pertain to fostering relationships between mothers and their babies during commitment to a YRTC. As you've heard in Nebraska, when a pregnant woman is incarcerated at the facility in York, if she meets certain qualifications, she has access to the parenting program, which can be parenting education, as well as day and night-- overnight visitation, but also for women who are pregnant while incarcerated can mean actually staying with their babies in the specially designed nursery program after birth up to 18 months. By contrast, for young mothers committed to YRTC, no such program currently exists. A mother may participate in the mothers and babies program, but it only provides for education and visitation and not a wraparound, supportive approach to learning to parent 24/7 with the opportunity to breastfeed and bond in the crucial early weeks and months of the baby's life. And we believe this is a missed opportunity for both the mother and the child. National recommendations for supporting pregnant and parenting teens encourage practitioners to offer programs that promote protective factors in the parent, such as self-efficacy and strong connections to family, and in particular, to help build teen mothers' parenting competencies through culturally sensitive approaches. As Nebraska undergoes the planning process to modernize our troubled YRTC system, and troubled feels like an understatement, this is a moment of opportunity to radically rethink all aspects of programming, including our response when a committed child is herself about to have a child. I have heard former Inspector General Rogers testify in the past weeks regarding the YRTC, and one note has stuck out to me that one of the girls removed from Geneva to Kearney this fall was born at Geneva herself. And every policy choice we make regarding next steps with the YRTCs should to be aimed at breaking that intergenerational cycle. Developing clear policies regarding family separation, investing in appropriate living space for children to safely reside with their mothers postpartum whenever possible, and incorporating hands-on parenting into a mother's individualized treatment plan would truly reflect Nebraska's family values. So thank you to Senator Cavanaugh for sponsoring this bill and being a champion for mothers in Nebraska, and thank you to this committee for your consideration. I'd be happy to answer any questions.

LATHROP: I don't see any questions.

JULIET SUMMERS: Thank you.

LATHROP: Senator DeBoer was moving her hand around, I didn't know if that was a-- thank you for your testimony. Anyone else here as a proponent? I wouldn't want to take you to an auction, Senator DeBoer. Welcome.

JASMINE HARRIS: Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s. I'm here today representing RISE. We are a nonprofit that works with people who are currently and formerly incarcerated. Our program operates in some of the correctional facilities here in Nebraska where we focus on character development, employment readiness, and entrepreneurship to the facilities that we serve at the Nebraska Correctional Center for Women in York, and the women's facility at the Community Corrections Center in Lincoln. I just wanted to add to what Scout was talking about with the ACLU, really referring to her work in the-- what the ACLU did with breastfeeding behind bars. I think it's important to note that with our program, when we work with women on our character development pieces, we work on self-limiting beliefs, guilt, and shame. And they learn to recognize it and how to begin to counter it. A lot of the women that we work with in these facilities have those self-limiting beliefs, the shame and guilt around not being able to be there for their children. So this program is very beneficial, I think, on that part. It allows for that long-term bonding between [INAUDIBLE] and then the social development for the youth. Allowing women to provide the breast milk for their infants can counter these feelings and help with the redirecting how the mothers are able to interact with their infants, therefore, increasing protective factors that would help keep a mother from reoffending once they are released. There are also, I think, mentions that there is no storage or way to deliver. There are organizations like Human Milk Banking Association of North America whose whole model is around how to store and deliver milk, so I think those would offer guidance for those policies that are in place. And we would encourage the committee to advance this bill in order to ensure that the women who are incarcerated are still able to provide breast milk to their infants for as long as they can without interruption because they are incarcerated. Thank you.

LATHROP: OK. I do not see any questions. Thanks for being here--

JASMINE HARRIS: Thank you.

LATHROP: --and what you do for the folks that have been incarcerated. Anyone else here as a proponent? Opposition testimony. Good afternoon.

SCOTT FRAKES: Good afternoon. Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name's Scott Frakes, F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services. And I'm here today to provide testimony in opposition to LB1171. The nursery program at the Nebraska Correctional Center for Women has been in place since 1994. It was launched with the recognition that it is important to provide new, incarcerated mothers and their infants a place to bond if conditions and requirements are right and are maintained for the safety and security of all involved. LB1171 attempts to broaden the parameters of the program and in ways that could have significant detrimental outcomes for mothers and their children. Shortcomings of the proposed legislation include the criteria for admittance or rejection from the program is not defined and seems to be reliant only on a cursory understanding of the mother's relationship to the infant or infants. There's no language that defines how the mother must behave in order to maintain custody of her child or any process that will allow for removal of the child. There's no description of what would happen to infants whose mothers are transferred to county jail or out of state for court appearances related to pending charges. It's possible that an inmate would be remanded for several months, and those transports usually happen quickly and with little notice. The bill does not give consideration of the rights of fathers and grandparents or the rights of the child. Children and family members should not be expected to serve a sentence in conjunction with the incarcerated mother. The number of mothers and children participating in the nursery program could-- would exceed available resources. Current capacity of the existing program space is 15 mothers and their children, but the program rarely exceeds 6 mothers with a child at any given time. If the census reaches ten mothers in the program, we have to then move additional resources from within NCCW to supervise the program. Prison is not designed to operate as a daycare. The current nursery program allows pregnant mothers to give birth and be with their child up to 24 months prior to their release, mother and child, to the community. There's research that supports the benefit of our current approach and as 1 of only 11 states that offers a nursery program, Nebraska can be proud of what we're doing. While studies indicate there is lower recidivism among-- excuse me, among mothers who participate in nursery programs, there is no research to support the effectiveness of letting mothers bring their children with them to prison. Nor is there information about the long-term effects on children who were brought

from the community and exposed to a prison environment. This bill does not account for the trauma resulting to the mother, child, and-- the child and the mother when the toddler ages out at 24 months and is removed and the mother remains, potentially with a substantial sentence to serve. These are just some of the issues inherent in LB1171. I'm also concerned that the intent of the bill subverts important processes involving DHH-- DHHS that help assess legal and other considerations with regard to having a mother and child participate in the nursery program. There are also complicating provisions related to having NDCS collect, store, transport, or schedule for pick up milk from nursing mothers. This process would take additional storage, staffing, and coordination to accomplish, and it is addressed in our fiscal note. NCD-- NCCW excels in providing parenting opportunities to incarcerated mothers. The importance of imprinting between the newborn child and the mother is well established and our nursery program is a national model for this approach. Sending a child to prison to serve time with his or her mother should be seen as a violation of the child's rights. In each individual case, the benefit to the mother must be balanced against what is ultimately the best outcome for the child. And I'd be happy to answer questions if you have any at this time.

LATHROP: Can you tell us what the-- you have 15 beds at the facility in York?

SCOTT FRAKES: We do.

LATHROP: And I think your testimony was at any given time you typically have about six of them with a mother-child combination.

SCOTT FRAKES: In the last couple of years, that's-- it's been less than that.

LATHROP: What's the criteria, Director? Or why, why do you not have 15 if you said if we, if we took Cavanagh's bill, we would, we would exceed 15. So what's your criteria and-- well, let's start with that.

SCOTT FRAKES: OK. We believe, we believe we've seen a downturn in the number of people, women, that are coming in pregnant at the time of incarceration. So that's part of it. And hopefully that's for all the right reasons. We have some pretty strict criteria, so there's a list of crimes that would disqualify a mother from taking part--

LATHROP: Can you give us a for example?

SCOTT FRAKES: Homicide would be a good start.

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LATHROP: Because?

PANSING BROOKS: What would? I'm sorry.

SCOTT FRAKES: Homicide.

LATHROP: And the rationale for that is they're gonna be doing a lot of time?

SCOTT FRAKES: Gonna be doing a lot of time. That would that be the first one, and then, of course, that's pretty severe violence. So and, no, don't ask me to work from memory on the list of the other things that are on there. But--

LATHROP: No, I'm just trying to get a sense of--

SCOTT FRAKES: Yeah, typically serious crimes or--

LATHROP: --who gets excluded.

SCOTT FRAKES: --so connected to that would be length of sentence. The mother must have a potential release date 24 months or less so that the child is born, the child stays in the program no more than 24 months, and the mother is able to leave with the child and return to the community, whether it's on post-release supervision, on parole, or if it's a flat sentence, flat sentence. So, so that-- I don't know that that is the biggest excluder. I think it's a combination of the more serious crimes, which often then come with more serious sentences, as well as just a lower number of people that are coming into the system pregnant.

LATHROP: Of the people who are-- of the women who are permitted that make up this typically six at a time population, are they women who have children while incarcerated, or are some of those women, women who have a newborn that have been sentenced to a term of years?

SCOTT FRAKES: Only women that are pregnant when they come into our system.

LATHROP: OK. So currently, if you had a newborn the day you got sentenced by the district court or, or the day before, you're not bringing the child with you. But if you're pregnant while incarcerated, then you, then you check the first box on eligibility.

SCOTT FRAKES: If we've had engagement with the county, there's the potential that someone-- you know, there could be a window in there. I

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can't think of a situation though since I've been here where someone gave birth just a few days prior to then be transferred-- being transferred to NDCS. So that door's not closed. But there again, unusual.

LATHROP: OK. And is that 24 months is that a hard number? Somebody's got 26 months, is that a hard number or is that approximately 24 months or less?

SCOTT FRAKES: We actually prefer-- we shoot for 18 months as a target. So that way, if there's a need to go a little bit longer, there's the flexibility. And since I've been here and I know one situation where I think we went closer to 26 months, there was some-- my memory is there was some issues that the person needed to get finished with to be eligible for parole. And so we agreed that it was in everyone's best interest and she was able to successfully release on parole. But the goal is to stay under the 24-month mark.

LATHROP: Senator Cavanaugh's bill essentially does two things. One, is it, it tries to open the eligibility for access to the nursery for mothers. The other is for women who are mothers that are confined to a women's facility to be able to pump and have that expressed mother's milk taken to the infant. And as I read the fiscal note, it sounded like this was going to be that aspect, the, the pumping and the storage of the milk. Let's assume that you don't have to deliver it anywhere. It's just going to remain in a freezer or refrigerator until somebody comes and picks it up. Is that creating a fiscal problem or is that part of your fiscal note?

SCOTT FRAKES: It's part of the fiscal note, yes.

LATHROP: Tell us what-- tell us or explain to us what you need to do in order to accommodate that aspect, assuming you're not involved in that delivery at all. Somebody comes by, a family member, picks the milk up on some kind of a schedule, and in the meantime, it, it is in some suitable storage, refrigerated or frozen. What do you need to do to accommodate that, that sort of a system, if you will?

SCOTT FRAKES: So our fiscal note went with the-- you know, the bill is written, so it didn't give that kind of clarifying what ifs. If our only responsibility was to ensure that the mother had a place to express, that we had whatever other rules and regulations we need to comply with, and having had no experience in that, I don't know what they might or might not be. I'm married and a father of two children but that's as far as my expertise goes. So certainly the cost would be

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reduced if our role was to just ensure the safe collection and storage until it was picked up by somebody. And off the top of my head, I'm not gonna to try to make an adjustment, but we went with the belief that we would have a more significant role in that and that would drive some more [INAUDIBLE].

LATHROP: I saw that and your fiscal note included transportation of the milk and that could be out to Alliance, and I, I get that part.

SCOTT FRAKES: Yeah.

LATHROP: But if somebody comes by and picks it up, do you have a storage facility? Like, it sounded like in here you needed a freezer and a refrigerator and--

SCOTT FRAKES: We would,--

LATHROP: --equipment and--

SCOTT FRAKES: --we would need whatever--

LATHROP: --is that stuff, is that stuff at York right now?

SCOTT FRAKES: No, not to my knowledge.

LATHROP: Don't have a freezer or refrigerator?

SCOTT FRAKES: Well, but there again, there are rules about how you store things so, you know, you don't store food where you store laboratory samples. I've got to guess, there's some rules around the management of breast milk that would require us to learn and implement. So I have to go with the assumption there's some equipment needed.

LATHROP: OK. I think that's all the questions I have. Senator Slama.

SLAMA: Sorry, didn't want you to miss me there, Senator Lathrop. Director Frakes, thanks for testifying today. I, I just have an issue with a few of the shalls in LB1171. And I think that you may be interpreting the bill the same way that I am. The first issue I have in Section 4 is "A prisoner or detainee who is lactating shall be given the opportunity to either nurse such prisoner's or detainee's infant or express milk." Meth use is still a problem in our state. There's no aside given for a woman who gives birth to a meth addicted baby, is brought up on charges, still has that meth in her system. She is still lactating. So the way I'm reading this bill, there is no

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provision made for when that breast milk is absolutely going to be unsafe for that child to consume. Do you agree with me in that assessment?

SCOTT FRAKES: Yes, that is one of our concerns.

SLAMA: OK.

SCOTT FRAKES: It seems to make it a pretty definitive that it will happen and not clear-- as well as that's another piece of this figuring out what that would look like in managing and make sure that we stay within rules and regulations and just good safe practice.

SLAMA: Sure. And then also, Senator Cavanaugh just said in her opening that this bill operates within the current constraints of the nursery program. But I'm, I'm looking at it more as a mandate. I'm seeing more shalls and I'm not seeing any mention of the current nursery program structure. I'm reading it as all children, 24 months and younger, shall be in prison with their mother unless there's a clear and imminent danger to the baby. Are you interpreting this the same way or are you seeing a tie into the nursery program here that I'm missing?

SCOTT FRAKES: No, we interpret it exactly the same way that it was, again, a mandate, there was very little exception to--

SLAMA: Thank you. That answers my questions.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming, Director Frakes. I-- we, we haven't seen you for a while, so it's good to see you.

SCOTT FRAKES: True.

PANSING BROOKS: Yeah, I guess I'm interested-- when I look at all the information regarding the, the nursing mothers and, and what's going on, it's, it's, it's pretty clear there may not be exact-- any kind of studies that, that show what kind of, of impact it has in the long run on a child as far as taking a child away at 24 months. But we're not-- you know, the excuse is-- thank you, the excuse is about trying to save a child from the devastation of being taken away at 24 months. I think when you look at the factor and the information that we know about having a mother with a-- or have a baby with a mother for the first two years is integral to a child's health and their well-being. And so I think that if you weigh those, those factors, it's much more important to have the child with the mother and to have the mother

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giving her the-- her child the milk that, that she's expressing. As you heard from the ACLU, there was a case where somebody-- you know, didn't-- couldn't even in, in county court express her milk or have an ability to provide that milk to the child. The answer was pretty much, well, that's too bad. So clearly something needs to be done more. I think that, you know, we're looking a lot to at the, at Y RTCs and what's going on there. And I know that's not your issue as much, but you do have children in your facilities as well who may be having children. So I'm just trying to figure out what you do provide in a way-- and it's just-- again, you're choosing them on an ad hoc basis by who's getting out sooner. And is that how how, we decide it? So if, if you commit a crime, you basically lose all your rights to your child. Is that, is that what you're sort of saying?

SCOTT FRAKES: No.

PANSING BROOKS: OK, good.

SCOTT FRAKES: But I'm saying if you're incarcerated, then it does have a direct impact on, you know, access. In our case, we have a robust visiting program that includes the standard type of visits that you see in a prison system. We have also longer-- we call them day visits where mothers are able to play and interact with the child, very different than the typical visiting room experience. And then we're one of, again, a handful of states that allows for overnight visits between mothers and children, having met a lot of criteria, including behavior and other factors. So I-- you know, part of the reason there's not a lot of good research or information around this concept is I couldn't find another state that's doing this idea of allowing mothers to bring their already born children into the systems and only 11 plus the couple places in the federal system that are doing the nursery-type approach. And that varies from one place I think that allows 90 days to most of us that are on the other end or at the two-year mark. There might be somebody out there that allows longer. So, so it's not that I don't recognize the issues, and it's not that I don't recognize the, the complexities as well, but it is a matter of figuring out what's the right thing for everybody that's involved in this.

PANSING BROOKS: OK. Thank you. Appreciate it.

LATHROP: I don't see any other questions. Thanks, Director.

SCOTT FRAKES: Thank you.

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LATHROP: Anyone else here in opposition to LB1171? Good afternoon.

STEVEN GREENE: Good afternoon. Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Steven Greene, that's S-t-e-v-e-n G-r-e-e-n-e, and I am a deputy director for the Division of Children and Family Services in the Nebraska Department of Health and Human Services. I'm here also to testify in opposition to LB1171. The, the department supports the bonding of mothers with infants and believes it's important to encourage these opportunities as long as it's safe for the child to do so. However, the department does not believe a youth-- YRTC facility is an appropriate place for a baby or toddler to live specifically to spend extended periods of time. Currently, the YRTC campus in Geneva is also able-- is, is able to accommodate one mother and infant at a time, although additional staffing would be required to separate the mother from the rest of the population if necessary. That living situation would be appropriately-- appropriate only for the first few weeks after birth to ensure the health of the newborn. The department would encourage and take steps to coordinate visitation between mother and infant in a safe, supported, and supervised environment. The current YRTC facilities would need to undergo some capital improvements and hire additional staff to ensure the safety and well-being of a child up to 24 months of age are-- staying there. For historical context, the YRTC in Geneva has only had two females who gave birth while at the facility. Just confirmed with program staff that that was from 2016 today that there's only been two occurrences of this happening in the YRTC facility in Geneva. The viability of storing breast milk for use by detainee's infant could be assessed on an individual basis. Distance between mother and baby and the resulting safe transportation of the mother's milk would be determining factors as well. I just want you-- the committee to know that our, our facilities director, Mark LaBouchardiere, was-- is unable to be here today to testify because he's, he's working in the YRTCs and that is his priority. Any questions that I am unable to answer, I will take back to him so that there is sufficient response that we can provide to you. Thank you for the opportunity to testify, and I'll try to answer the questions in the best of my ability.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming, Mr. Greene.

STEVEN GREENE: Thank you.

PANSING BROOKS: Is it doctor?

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STEVEN GREENE: No, no, not doctor by any means. Thank you, though.

PANSING BROOKS: OK. Well, we're-- thank you for coming. So I guess what I'm interested in as you provide a-- you have provided a facility at, at Geneva.

STEVEN GREENE: Um-hum.

PANSING BROOKS: And so now there's no facility at Kearney, the YRTC-Kearney. So how, how are you-- are you planning on building something? The, the note should be even larger so that you can continue your good program.

STEVEN GREENE: So I, I appreciate the question and I thought I might be asked that. So I did ask program specifically what would happen if a, if a, a teen in Kearney was to be pregnant? What would, what would we-- how would we serve that, that mother? And I was told that Geneva, the facility, the La Flesh, La Flesh facility specifically that was developed to coordinate a mom and me type program, that that mother would be immediately transferred to the Geneva facility so that she could stay. And then if was to have the, the baby in the current program that she would be able to stay with the child for the first few weeks of, of being, being there in that new facility. So does that help answer your question?

PANSING BROOKS: So just for a few weeks and not-- how long was it--

STEVEN GREENE: Sure.

PANSING BROOKS: --prior before when you,--

STEVEN GREENE: So--

PANSING BROOKS: --before when you allowed girls to be at the YRTC-Geneva?

STEVEN GREENE: Yeah. So my understanding is the first three to six weeks that the mom would be able to stay with the baby, but then we would also coordinate visits with the mom and baby. Ideally, if it was in a relative or kinship placement or-- so that we would do our best to coordinate that visit with them. But I, I don't know specific and I'd have to get more information back from program to provide that to you.

PANSING BROOKS: I'm-- my understanding is of all the people that are incarcerated in the world, the united-- of all the women incarcerated

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in the world, the United States incarcerates one-third of them. I just bring that to your attention because we are not doing this well. And this is just one more indication of what we're not doing well and taking care of the people, of, of the children, of these people that are incarcerated. Many states are now looking at diversion and, and other possibilities for these, these pregnant mothers. And I, I just find it just another indication of how we have to spend more money, the, the rural counties should be very concerned about this because we're just spending more money to, to not fix the problems that we have. And certainly incarcerating our women is not the answer to what we need to be doing for our future and growing our communities. So I know you probably don't have a lot to say to that, but just sending them there for a couple weeks is not a good solution to our future in our communities. Thank you.

STEVEN GREENE: Thank you.

LATHROP: OK. I don't see any other questions. Thanks, Mr. Greene.

STEVEN GREENE: OK. Thank you.

LATHROP: Anyone else here as an opponent or wishing to testify in opposition to LB1171? Anyone here in a neutral capacity? Welcome once again.

ELAINE MENZEL: The last time today. Chairman Lathrop and members of the Judiciary Committee, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l. I'm here today on behalf of the Nebraska Association of County Officials. We are able to move into a neutral position because Senator Cavanaugh has shared the amendment, AM2405, that she has offered to the Judiciary Committee. And we would ask for consideration of that. And that's our basis for being able to move to neutral rather than an opposition position.

LATHROP: OK. I don't see any questions. None. Thank you.

ELAINE MENZEL: Thank you.

LATHROP: Anyone else here to testify in a neutral capacity? Seeing none, Senator Cavanaugh, you may close. We do have three letters of support: Marcia Blum at the National Association of Social Workers, Nebraska Chapter; Tiffany Seibert Joekel, the Women's Fund of Omaha; and LeeAnn P-a-n-c-h-a-r-o-e-n, Planned Parenthood of North Central States. All in support. Senator Cavanaugh.

CAVANAUGH: Thank you, Chairman Lathrop and members of the Judiciary Committee. I am-- the page, Ashton, is passing around right now is the program overview for the nursery program at York. I'd like to start by saying that this is an excellent program and I, I appreciate its-- the, the fact that it exists makes Nebraska very unique. And I'm seeking to expand access to the program, not to diminish the program itself. This is really, truly an excellent program and I am thrilled that Nebraska is a leader in this maternal well-being and infant well-being by having this program. I have just outlined on the first page inside the eligibility and I am happy to work with the committee. I think that-- I appreciate Senator Slama has brought up some really excellent points. This needs a lot of language changes. I will bring an amendment, we'll tighten this up. The intention is not for the eligibility-- you can see the second section is day or overnight child visits where it talks about that you must have your parental rights intact and, you know, permission from the legal guardian, no crimes against a minor. All of those things for visitation, it doesn't address those at all. What I'm trying to address is the restrictions-- the automatic restrictions on eligibility. And what I'm hearing from the department is that they would like my bill to actually be more prescribed than it is. So I will do that. I, I want them to consider each case on its merits as to whether or not that is the suitable option for that mother and that child and not discern without even considering the merits of that, that situation. And while, yes, a homicide is a horrific crime taking another person's life, you can consider that as a reason not to qualify for the program. This just means that you don't automatically disqualify from the program because of the crimes that you've committed, whatever those crimes may be. So if the board that does-- reviews the eligibility thinks that a homicide is a barrier you can't get over, then that's what they think. I do not prescribe that they must-- if they deem that that makes you an unsafe parent, which I would say is possible, this doesn't say that you have to keep that baby together. And also, if you've committed a homicide, one would assume you've lost your parental rights. Maybe you haven't, but one-- I think it's a fair assumption that you have. And if you've lost your parental rights, then you've lost your parental rights. This doesn't reinstate parental rights that have been taken away. So with that said, I also brought this bill to introduce-- or to address the issue with the YRTC. Currently, they don't really have a program or a policy, written proscribed procedures, they separate babies, newborns from teenagers. That's it. Whether it's one a year, or one a decade, they take a baby-- the day you leave the hospital, the day you are discharged from the hospital, your baby is placed somewhere else. And that is just malarkey. I'm trying to think of a

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word to say. That is malarkey, that a baby is removed from a mother who is placed in a youth's rehabilitation and treatment center for no prescribed reason with a stranger with no documentation as to how it's done, why it's done, no process involved. I find that terrifying and unacceptable. And I do not trust our Department of Health and Human Services to be doing right by these children based on what I have seen in the past several months. So I want to make sure that we are documenting what-- where a baby is going when it is separated from its mother upon release from hospital. This-- to the, to the issue about drugs in breast milk-- excellent question, we don't do drug testing. Another issue with the Department of Health and Human Services. So if that woman isn't in jail and she delivers that baby at, at a hospital and they know that she's on meth, doesn't matter, that baby goes home with that mom. There's no drug testing. So that's a problem that we need to address. This bill doesn't address that, but I am happy to work with you on that because another issue. This bill was originally intended to include jails, which is part of the reason that it has some convoluted issues and it's still that we need to tighten up. I am hoping that the county jails can work outside of this bill to make sure that women have the opportunity to express milk. And it was never my intention to create new construction. And I will amend it to prescribe the program manual and allow for alternative placement. And as far as the distance for transporting for milk, it doesn't-- women travel the country, they have babies, their babies stay home, they travel the country, and somehow we have managed to figure out how to ship that milk. I'm sure that Union Pacific would be happy to come in and counsel the Department of Health and Human Services in on the services that they utilize for their corporate executives who travel while nursing. It is a surmountable problem. It is one that we as a state should be actively addressing. It goes to the health and well-being of a child. It addresses postpartum depression. It makes a woman who's incarcerated feel like she can do something to take care of her child when she can't be there to take care of her child. And it can only help with the mental well-being of that woman. It should be a civil right. It is definitely medically necessary. And if you do happen to be addicted to drugs when you enter prison, you eventually will have those drugs out of your system. So being allowed to express milk and build up your milk supply, and as they say, pump and dump that tainted milk until you have untainted milk should be allowed and encouraged in this state. And I encourage Director Frakes to take a tour of the nursery because they have a refrigerator and a freezer. And if this building that didn't have a women's restroom for senators until about 25, 30 years ago now has a mother's room, I'm pretty sure

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we can figure out how to put milk in a fridge. Thank you. And I'll take your questions.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for bringing this bill. I'm just envisioning a protest somewhere with everyone yelling, ship that milk.

CAVANAUGH: We can arrange that.

LATHROP: Senator Slama.

SLAMA: Senator Cavanaugh, thank you so much for having the willingness to work on some of the issues I have brought up in this bill. I was hoping you could expound a little bit on the automatic disqualifiers aspect of your closing. Because for me personally, I think that, you know, murdering someone, sexually abusing children, abusing children should be in a blanket automatic disqualifier for being with your child. So could you just speak to that a little bit more and clarify my understanding as to where you're coming from?

CAVANAUGH: So thank you very much for that question, because I don't disagree with that. I think that those are good barometers for whether or not you're going to be a good parent or not. But I think that the, the people that are there, there is a committee that decides-- you put in an application, there's a committee that decides. And I feel like putting in these proactive restrictions for that committee when they have been working with an inmate and they know what is gonna be best. Like, I've met a young woman who was maybe 20, 21, who was about five months pregnant, and she had an aggravated assault charge and she was talking to the warden about whether or not she could appeal the decision. And she said, well, your charge means you can't. And she's like, but I've been working hard. I've been working my program. I'm really trying to rehabilitate myself. And she's like, I know and you are, you're doing a great job. So it was actually that moment that's sparked for me that warden should have the ability to look at it case by case. Now if you've murdered someone, you're-- that's-- you're gonna really have to build a hard case for that. But I don't want to be the one to say because I don't know that person, I don't know that life-- their life and I don't know what they've been doing to rehabilitate themselves. So I don't, I don't think that we should automatically disqualify them from it. I will say if, if that is an absolute sticking point for the body, then we should talk about what those would be. But aggravated assault, while awful, is not as awful as child abuse and homicide when we're talking about caring for your

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child. It could be a self-defense issue that went awry. All kinds of things, so. Sorry, that's a really long answer.

SLAMA: No worries. Thank you.

LATHROP: I see no other questions. Thank you, Senator, for bringing us LB1171.

CAVANAUGH: Thank you.

LATHROP: And that'll close our hearing on the bill and bring us to Senator Vargas and LB1208. Good afternoon, Senator Vargas.

VARGAS: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. And also if I could have one of the pages hand out. One page, thank you. OK. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I represent District 7, communities of downtown and south Omaha in the Nebraska Legislature. LB1208 is a continuation of our office's work on the subject of restrictive housing and immediate segregation. Now you'll recall that last year I introduced LB739, which changes some statutory procedures regarding the use of restricted housing for inmates in the Department of Correctional Services. A part of that bill was amended into this committee's omnibus LB686. This includes provisions that prohibit the use of solitary confinement for vulnerable populations like youth, pregnant women, and those with serious mental illness, developmental disabilities, and traumatic brain injuries. And this bill is going to effect this year. LB1208 picks up where LB739 left off and expands on some of those proposed reforms. As the committee is aware, restrictive housing is the term that our statutes and department use to describe what many others would call solitary confinement. In the last several years, our Legislature and, in particular, this committee have demonstrated great leadership by passing a number of bills intended to enact meaningful reforms, significant and comprehensive reforms to address the overcrowding problem in our prison system. The department's excessive use of restrictive housing is directly related to our overcrowding problem. I do not think that's a new concept. I'm not the first person to say that, but that is the reason why this bill exists. The Legislature passed LB598 in 2015, which ultimately led to some reform of the use of restricted housing. However, the frequency of use and length of inmates placed in restrictive housing is still troublingly high. This bill seeks to provide for further reform. LB1208 limits the amount of time an inmate can be placed in restrictive housing to 90 days per calendar year, regardless of if the days are consecutive or not and limits the amount of time an inmate can be in immediate

segregation to 15 consecutive days. The bill does allow the department to make an individualized determination to extend the amount of time an inmate can be in a restrictive housing and provides guidelines for the process under which that can occur. A special committee would need to be convened to present it with evidence that a less restrictive setting would not be appropriate due to four circumstances. I think these are fair for circumstances: that the inmate has a history of serious violent behavior in correctional facilities; has tried to or has successfully escaped from a correctional facility or setting; has acted to or threaten to destabilize the correctional facility; or is a member of a security threat group. Now LB1208 also requires the department to review the placement of inmates in long-term restrictive housing every 30 days. LB1208 also lays out what we refer to as a step-down approach to restrictive housing to help transition inmates from that environment back into the general population. You-- you have heard of these reforms, they're modeled off of-- after Colorado successes where corrections have substantially reforms the state's restrictive housing system without an increase in staff assaults. The step-down approach gradually increases the amount of out-of-cell time for inmates confined to restrictive housing based on the length of their confinement. In addition, the use of restrictive housing for more than 365 consecutive days is prohibited, except in cases of serious offenses that are committed while in restrictive housing. LB1208 requires the department to provide all inmates in restrictive housing with continuous access to mental health treatment and clinical programming prohibits the use of double-bunking and stops the practice of discharging inmates directly from long-term restrictive housing into the community by stipulating that inmates must be given at least 120 days to transition out of restrictive housing before they are released into the community. And that is a direct result of we have many cases of people being right in-- transitioning right into the community straight from restrictive housing. Section 16 of LB1208 contains language about confidential informants derived from Senator Morfeld's LB352, which was signed into law last year. This section, as well as Section 3, would require that the department share records and information with the Ombudsman's Office and Inspector General, which I think it's a pragmatic reform. I know this is a long bill with a lot of new ideas about reform, so I appreciate the committee working through all of this and the hearing testimony from interested parties. I've worked closely with the Ombudsman's Office on this bill, and hope that we can be successful in moving things forward. I think these are reasonable reforms that are responsive to the real situations we are seeing in our correctional facilities. While I understand, and I know we all understand there are challenges the department faces, I also

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think it's appropriate for the Legislature to continue to provide oversight and think through what we can and should be doing better in terms of holding the standard of what is occurring in our Corrections system. There are others here who will speak in support of this bill and can provide very specific expert testimony about the reforms proposed in LB1208 and the history of restrictive housing and overcrowding issues within the Department of Corrections. So I'd ask the committee to save those questions for them. Before I open up for questions, the only thing I want to, I want to share is after the reforms that we made last year and I wanted to become more educated about the issue even beyond the policy recommendations, I had an opportunity with a couple of colleagues to visit NSP. Also, I had the opportunity to go visit Tecumseh and specifically wanted to get a better understanding of what's happening in restrictive housing in Tecumseh. And a lot of what I had heard talking with inmates, talking with staff, informed this. This is not just grounded in what I think is good policy that other states, particularly Colorado, are enacting, it's also grounded in what I am hearing and seeing and the need for some more reform in this area because it's happening in our system. And I know I'm not the only person to say that. So I want to thank you. I'm happy to answer any questions and there will be others that will testify that can answer some other specific questions as well.

LATHROP: Very good. Senator Pansing Brooks.

PANSING BROOKS: Thank you for bringing this bill, Senator Vargas. I'm interested in the discussion about when, when they move somebody out of the cell for four hours a day, that is Section 10,--

VARGAS: Um-hum.

PANSING BROOKS: --and they have to have at least four hours out of cell per day. Is that-- isn't that a little like dog pen? Does that count as getting out of your cell?

VARGAS: So the way that we wrote this is initial six months to have four hours of out-of-cell time per day. My understanding is that out-of-cell time would count for that specific space with the addition including two hours of structured out-of-cell time. That's what we wrote in. If we need to then further clarify what out-of-cell time would look like so that it could be potentially outside of that little area that you're referencing, we can work on that. But we, we wrote it to be in line with some of the recommendations from the Ombudsman.

PANSING BROOKS: And were there discussions-- and I can ask others, but were there discussions-- thank you, about putting in the, you know, the goal is to make sure they're not a danger to self or others, clearly, and that-- I mean, best practices for juvenile states, you don't, you don't put them in once they've calm down and you take them out and try to get either programming or other kinds of interventions that will help to calm the situation, that will help to maybe, maybe-- you know, if somebody's that disturbed, as Mr. Jenkins was, where he was-- that's one of the people that we've had that was released straight from solitary confinement into our communities. That, again, I, I know that we're getting information that, that limiting solitary is dangerous for our communities. But clearly placing people straight into our communities from solitary is, in my mind, much more dangerous. So if you'd like to speak to that a little bit, and I'll ask other people, too.

VARGAS: Yeah. So I'll say holistically, we're looking at this, there's no silver bullet to starting this. I know we know that. That's why looking at a, a little bit more comprehensive reform in the area, making sure they're getting the mental behavioral health services, making sure that every 30 days there is some review, putting a cap on the amount of consecutive days and also the number of calendar days, ensuring that there's that transition period so that they're not just reentering our, you know, society straight from restrictive housing. And, and the reason why-- I know you're referencing Nikko, but I don't want this to feel like an outlier. In 2019, there were 37 inmates released from restrictive housing straight into the community. So this is happening.

PANSING BROOKS: How many?

VARGAS: It is 37 in 2019; in 2018, it was 44. I'm encouraged by the decrease, but it's still happening. So to answer your question, I think together all these things will then help ensure that while they're in restrict-- we're, we're constantly evaluating what those reasons are. But there is deference in here that would allow the Department of Corrections to then basically justify why they would need to then keep them beyond a certain amount of time, because there are instances where maybe all those different-- these reforms, there's still reason then to keep them in there. And that's still intact here, we're, we're putting into statute.

PANSING BROOKS: OK. So I, I just want to say one more thing about-- I mean, generally, we fight against-- our Legislature has a tendency to fight against laws that protect children. And we just had the solitary

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confinement ban signed into the law by the Governor. So I want to thank him and say that we can move forward now with adults and try to have best practices moving forward, taking care of our people, making them less dangerous when they return to our communities. So I want to thank you, too, Senator Vargas, for your work on this.

VARGAS: Thank you very much.

LATHROP: Senator Slama.

SLAMA: Thank you, Senator Lathrop. And thank you, Senator Vargas, for bringing this bill today. In drafting LB1208 did you do that in consultation at all with the Fraternal Order of Police or prison staff to get their perspective on this bill and what kind of impact it would have on--

VARGAS: So I did not do it in consultation with the FOP. I did do it informed from my conversations at that time when I was talking with individuals at NSP and then Tecumseh on what other realities that they're facing and then what's the realities of inmates, what they're facing to get a better understanding of what reforms we put into place. I did work in hand with the Ombudsman, Ombudsman so that we can then make sure that we're informing not only what best practices are, but also the data given that they act as what I think a strong intermediary.

SLAMA: Sure. And I ask that question because, as you know, Tecumseh's in my district, I have several hundred constituents who work there and do an outstanding job of doing that job. And I'll be honest, and I want this on the record, I've never received the kind of messages and input on a Corrections bill from those staff members, as I have on LB1208, concerns about their safety, concerns about the safety of other inmates. And I just wanted to give you a chance to speak to those concerns, because I think just reading through LB1208, they're based in fact, and based on the reality of their experiences in working in Corrections. So--

VARGAS: Yeah, I'm happy to. And I can't speak to the perspectives of the staff that shared opinions with you. That's the lovely thing about our process, anybody can contact senators. What I'll say is this--

SLAMA: Just to clarify, some of these are family members. So I-- they're not being asked by anybody, it's their genuine, honest concerns with this bill.

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VARGAS: So, so I still can't speak to, to the family members, but I appreciate you sharing their concerns on the record. Here's what I'll I say, this is bit of deja vu, I said this in another bill recently. I don't want to, I don't want to say that their concerns aren't valid. I think anybody's concerns are valid. What I can look to is when we've enacted policy in an area and whether or not we've seen what are our fears. And in Colorado's reform, we have not seen assaults go up as what some might expect. And I think that's the reason why I'm particularly looking as Colorado as an example. I think there are things that we have within our control, both as the Legislature and Department of Corrections, on how we roll out. This is no different just for this bill, it's for any bill. How we roll out, buy-in rules and regs that support implementing changes like this, reforms like this will dramatically help to ensure that, the safety of not only staff, but making sure people are reentering society, and we are not creating further problems and addressing overcrowding can, I think, all be addressed. But taking those concerns are important in ensuring that when we're in implementing policies like this, reforms like this, we're not just assuming that it's one-and-done once we pass the legislation that we're, we're working hand-in-hand with the Department of Corrections to make sure they have what they need to then ensure that buy-in exists.

SLAMA: Thank you.

VARGAS: Thank you.

LATHROP: Senator DeBoer.

DeBOER: I did want to ask you, Senator Vargas, about a couple of things and whether there is sort of a provision for exceptions in a couple of cases. I know that, that I have been told before by folks in the Department of Corrections that there are some folks who opt-- personally would like to be, they ask to be in restricted housing and I think they call them safe keepers. I'm not sure, could be the wrong term. But I know that one of the things I've been told is that some folks get released directly out because they ask to go into restrictive housing for the last few weeks or something like that. Do you have any data on any of that information or is that something I should ask later when we get to some of the other folks?

VARGAS: We'll make sure to follow up, but I think that's a better question in terms of the data to ask from some of the other folks. But it's noted.

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DeBOER: Yeah, that's something I think we should at least get some information on. And then there might be some possibility-- would you be interested in talking about possibilities for some exceptions to these rules, like maybe double-bunking, if you request to have restricted housing, might be OK or something like that?

VARGAS: I am more than open-minded on working on this, take any suggestions. So I, I look forward to that. And, and then also, just as an additional response, this is not just to senators, this is if, if we need to ensure that there are even more guidelines looking at some of this language in regards to the FOP, I'm also open to that.

DeBOER: Thank you.

LATHROP: OK. I don't see any other questions, but thanks for bringing the bill forward.

VARGAS: Thank you.

LATHROP: We'll look forward to-- looks like there's a lot of people here to talk about it. In fact, how many people are going to testify on this bill? OK, keep your hands up, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11. We've got about 11 or 12. OK, thank you. We'll take the first proponent. Good afternoon.

JAMES DAVIS: Good afternoon, Senator Lathrop and Judiciary Committee. My name is James Davis, D-a-v-i-s, and I'm the Deputy Ombudsman for Corrections. I want to touch on couple of points. I had visited Colorado and evaluated their system. We first went to Colorado State Penitentiary, which has approximately 658 seg beds. While touring the facility, we had an opportunity to visit with staff and they were able to talk freely. Basically, we asked questions about before and after when they were implementing the new policy under Director Clements in 2011, they had approximately 1,500 on administrative segregation. During that time, staff concerns were, we're understaffed, the physical structure won't meet the demands, escorts, and out-of-cell time in yards. Well, Colorado State Penitentiary wasn't built for that. Basically, it was built for ad seg. But when the legislature passed, then basically staff had time to adjust and they rolled it out. And on the Clements' watch, they removed 700 people off of restrictive housing. Now with that said, staff bought in safety basically were a major concern, but they were concerned about staff assaults increasing, but it decreased over a period of time. Also, inmates were able to get into prosocial, educational, cognitive-based programs. They had access to four hours out-of-cell time: structured,

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two hours; two hours, unstructured. The two-hour structured is education, basically, that's education, unstructured is basically recreation. So then Colorado basically has-- they move it up to six, six hours. And I know you guys are concerned about, we don't have enough staff to do that. But Colorado's met with the same challenge. They didn't have enough staff to roll this program off. But once it rolled off, staff got together and they worked and they didn't do it in a 24/7 shift. They moved people out in groups. And so they were able to get that population out in a timely manner in group sessions and programming. They first come out chains and shackles, then once their behavior shows that it's appropriate then they take the chains and shackle off and continue to work with these individuals in classroom settings. Oh, that's my time. So if you have any questions-- I just want to follow up on a couple of things. You, you had a question. Senator Pansing Brooks, I think your question was to-- I think, I think you had your question. What was that question you asked? Because I can to answer it.

PANSING BROOKS: About best practices, was that the one or--

JAMES DAVIS: Yeah, it was, it was--

PANSING BROOKS: --or about when imminent harm to self or others?

JAMES DAVIS: Right. I did observe in Colorado where an individual was dangerous to others, but yet they were able to execute the four hours out of cell. Now this individual was in a separate classroom and was not interactive with others, but he was able to get the two hours, unstructured and structured time out.

PANSING BROOKS: Thank you.

LATHROP: I don't see any other questions, James.

JAMES DAVIS: Can I just ask one? Senator Slama, she had a question for--

SLAMA: No, I didn't have a question for you. I don't want to set the precedence of the Judiciary Committee of us being able to--

JAMES DAVIS: OK. All right.

LATHROP: OK. We'll get, we'll get-- we have like 12 people to get through, so we'll,--

JAMES DAVIS: All right. OK.

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LATHROP: --we'll take on the next proponent. You're a proponent? Proponent testimony? Anybody else in favor of this bill that wants to be heard? Good afternoon.

PAUL FEILMANN: Good afternoon. My name is Paul Feilmann, F as in Frank -e-i-l-m-a-n-n, licensed mental health therapist, currently retired. Today, I'm speaking in support of LB1208. The issue addressed in this bill is the use of restrictive housing in the Nebraska Department of Corrections. The critical aspect of this kind of housing is the isolation from nearly all human contact for 22-plus hours per day. As evidence for my, for my testimony today, I refer to the five pages that I have given you. These pages include photos from the PBS Frontline documentary, Last Days of Solitary, which I sent to your on your email. I think that if you get a chance to watch this, if you haven't seen it, it gives you an in-depth three-year documentation of what solitary confinement unit looks like. And Senator Slama, if you look at this video, you will see an exact replica of what goes on at Tecumseh. It's not a pretty picture because solitary confinement's not pretty. But if you really want to understand what the staff have to deal with daily and what the, what the inmates or residents have to deal with, take a look at that video. These are pictures from that video. And I'll explain them as I go through page by page. On the first page I circled in yellow, this program, you can watch the full three years embedded documentation of how they implemented solitary confinement or restrictive housing reform. Between 2011 and 2017, the Maine State Prison reduced the number of inmates in solitary from 100 to 8. The direct-- OK, I'll skip that. Page 2, this is just some sample pictures of some of the psychological distress that are shown in, in the video. If you watch the video, you'll understand the backstories to a lot of these individuals. Some are experiencing psychotic symptoms. Some are experiencing attention deficit and have no way to deal with it. Some show time-lapse decompensation over 25 days. Page 3, this is where we get into serious decompensation, which involves multiple self-mutilations, smearing feces. The gentleman who has to clean this up in this picture, he had been in solitary. He said that he, that he does this 20 times a month, severe, serious, serious attempts. The next page shows a severe cutting episode, an individual goes through treatment and in the prison they use out-of-cell time, engage in mental health services and he eventually ended his cutting behavior and was discharged into the community safely. Page 5 shows a lot of the classroom settings that are set up with shackles and handcuffs to implement gradual step down of treatment. Paragraph on page 5 is very important, this has to do with Nikko Jenkins, has to do-- there is testimony from the report done in 2014, testimony from

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Denise Gaines, a therapist who worked with Nikko Jenkins. She worked with him every week in therapy for a year and he received psychiatric medications and he was stable until he was discharged back to the prison where he stayed in solitary confinement. Can I--

LATHROP: We'll ask you to wrap up your last thought. I, I have to stick to the time because--

PAUL FEILMANN: Yeah, yeah, I got one last thing I want to tell you. The last letter on here is very important. The use of solitary confinement in prisons is banned by the U.N. for more than 15 days. There's a gentleman, I attached his letter, Sergeant Gordon Brown. OK, he's a veteran. He used solitary confinement in prisoner of war camps in Iraq as a U.S. soldier. And he wrote a letter talking about his views of the use of solitary confinement and what it does to individuals. The only thing I would ask--

LATHROP: We'll take a look at it, Paul.

PAUL FEILMANN: Yeah.

LATHROP: We got to, we got to enforce the red light. Hang on, let's see if anybody has a question for you, however. Senator Pansing Brooks.

PANSING BROOKS: Thank you so much for coming, Mr. Feilmann. I just-- again, I'm, I'm happy to have-- not happy, but I am glad that you passed out these pictures. We are dealing with human beings and 96 percent of whom will get out. And I, I thank you for showing us the raw truth of, of the despicable things that we're doing to humans.

PAUL FEILMANN: Can I just make one comment? When I watch that video, which you will notice is-- and I did mental health work for 25 years, I used to do on-call at the psychiatric hospital. If you can talk to every individual in segregated housing for an hour, even through the cell door, which is if you watch the video, the Director of Corrections talks to the guys through the cell door. You can have a conversation that will keep them in this world. OK. And you're gonna hear testimony of people that have experienced this and how critical that one hour of human contact would be. This doesn't endanger anybody. It takes some peer-to-peer, Director Frakes has some good peer-to-peer stuff going, qualified staff could talk one hour each person and, and you can keep that person in segregated housing still, but keep them in this world and functioning and hopeful that there's a future.

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PANSING BROOKS: Yeah, I wish there was a higher fiscal note so we could pay for more people to do that kind of interaction in prison.

PAUL FEILMANN: Well, they're, they're-- this has to stop. So--

PANSING BROOKS: It does. Thank you.

LATHROP: OK. Thanks, Paul. Next proponent. Good afternoon.

TIMOTHY LOPEZ: Good afternoon. My name is Timothy Lopez, T-i-m-o-t-h-y L-o-p-e-z.

LATHROP: Can you speak up just a little bit?

TIMOTHY LOPEZ: Yes, sir. My name is Timothy Lopez, T-i-m-o-t-h-y L-o-p-e-z. I reside at 53-- 5203 Walker Avenue. I'm in support for the bill of LB1208. I am 29 years old. I have been part of the correctional system since I was younger. I first went to seg at the age of 19. I spent years at times there left all by myself. I had no human contact for long terms of time. I was lost and became more lost in the ways of the mind altering events. I would start to hear things and start to become part of the world of unconsciousness myself. I started to do things that would get, get me by, by flooding and getting the attentions of others just to have some type of human contact. I would deal with the depression from the mind advance of a witness. I would, I would stay up at nights because I couldn't sleep crying for help and needing someone to talk to. Just to hear my cries and tell me that it would be OK. But I never had that, and I would, I would have cold sweats at night at times and I would have nightmares as well, too. I would also witness the, the hearings of loud cries at night, the doors creaking, and screams all night. I would become part of this. I was left alone one day when I was feeling suicidal and I would later that night make an attempt at my own life. I hung myself in my cell on August, August 14, 2015. I was already dealing with mental health issues and was, was trying to get someone to help me in segregation with them. This would leave me in a coma. I had to learn how to write again, walk again, talking, brought back to normalcy, not to just live life, but to complete a prison sentence and enter right back into segregation at the release from the hospital onto to an all-metal bed with no mattress, pillow, but a security smock and an IV cord. I would witness people playing with their fecal matters to pass time, and these type of conditions became the norm of so many. I would try to just sit here here to see if I can get help with my mental health issues. It doesn't take months, it doesn't take months to lose your mind in segregation, but yet it could take minutes or seconds. It

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doesn't take years to commit suicide or months, but yet minutes or seconds, I still to this day have psychological issues when my doors are closed in my room. I get paranoid like I'm left be-- left behind again with no one to talk to. And I start to feel anxiety and being paranoid like I'm being left behind again. And no one will talk to me-- or and if no one would talk to me, I would start to feel down and paranoid about it. I would sit in my bed for long periods of time just hoping that someone would come and open my door, open my door for me to get out. It would take me long periods of time before I get to, to the consciousness to have the ability to know that it's my door I can control to open it. The voices in my head would become the product of my life throughout the time of segregation. But it wouldn't-- it would go away when I was released out of segregation and had time in general population to readapt. We were like Tom Hanks in Castaway just needing somebody like little Wilson to help us get through this time. A little bit of human contact would of helped my friend, Patrick. The life of a human being is more than a job. Just maybe one day your loved one, imagine how you would feel. And please just help by passing this bill. Who is next? We all matter, we all matter. Patrick mattered. Thank you.

LATHROP: Mr. Lopez.

TIMOTHY LOPEZ: Yes, sir.

LATHROP: Did you lose a friend?

TIMOTHY LOPEZ: Yes.

LATHROP: Was he in, in restrictive housing?

TIMOTHY LOPEZ: He, he was dealing with a lot of psychological issues in things as well. A lot of us have pre- mental health issues before we go in there. I was taken away from my mom as a kid. And, and I heard my own mom tell me that she didn't want me as a kid. And when you're placed in restricted housing, it's a reoccurrence of the abandonment all over again and it leads to other things. You start to be paranoid because you're trapped. It's like a fish that can grow to ten feet, when you put it in a three-foot tank, it only grows to the capacity of what that tank will allow it to. And, and a lot of people will say that we're childish and things for the things that we do. But you understand, when you're mind starts to deteriorate, your maturity level goes down as well. And, and Patrick was dealing with, with, with staph infection and MRSA as well and dealing with those type of things. There was times when I have a witnessed him having loud

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screams about pains in him prior to his assault on a correctional employee that led to him going in there. I was close to him and, and he mattered, too, man. It's not about me, but it's about those that lost their life and the ones that will lose them if this ain't passed.

LATHROP: Mr. Lopez, how much time did you spend in restrictive housing?

TIMOTHY LOPEZ: I would say, roughly about six years. I did 2010 to about 2012, and then I did from about 2012 to 2013, 2014 to 2016, from 2016 to 2017. I understand that there's violence that leads to segregation. And I, I-- I'll be the first to admit I was a very violent inmate and I, I would harm people. I was very vulnerable to the manipulation of the gangs as a kid and became subject to that and would conduct the assaults on their behalf. During this process of time, I would start to deteriorate more and be more vulnerable to the manipulation aspect of these things. In, in those times of being isolated, you start to deteriorate more, which led to attempted suicide in 2015, attempted suicide twice in 2016, all because I have remorse for that. I went on several hunger strikes in protest for the lack of mental health, lack of institutional control, a lack of, of human contact. I went on a hunger strike for 7 days, 10 days, and 20 days, and was down to 187 pounds within a month and a half. And still no one would come and provide me. It wasn't until after my attempted suicide in 2015, after those protests, that somebody would come to help me. But even then, it was read a book if you want to get by, placed into another segregation cell on an all-sheet metal bed with no mattress, no pillow, a security smock, and an IV in my arm, just to give me enough to survive but yet to be comfortable with life. When you have a question about why I was only given a, a security smock and wake up crying and couldn't barely walk because I had, I had to learn this. I crushed my trachea and esophagus from all this process. They would tell me we are under supervision so we can leave a IV in your arm. I said, well, can I get a mattress and a pillow? They said, no. Anybody who doesn't understand or think that this is not a problem are disconnected from humanity and themselves. Us humans are more than a job, we really are. It's just like if a dog, if a dog bites somebody, they place them into a kennel for quarantine and do assessments right away on them to see if they're a danger or an isolated incident. The key word of their, their segregational status is long-- long-term. And they say, we'll assess through that time, there's no human contact to assess us through that time. They go off if you get a misconduct report and leave you in there and, and that's not right. Just if somebody could have talked to Patrick that day, he would probably be here, too.

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LATHROP: Senator DeBoer's got a question for you.

TIMOTHY LOPEZ: Yes.

DeBOER: How long have you been released now?

TIMOTHY LOPEZ: About, about three weeks now, ma'am.

DeBOER: And how are you doing?

TIMOTHY LOPEZ: I'm doing-- I'm, I'm slowly getting there, but by the support of, of entities that I've been a part of, as well as the support from the Michael House and Miss Melissa [PHONETIC], it, it, it really helps me by, everyday she checks on me to make sure that I'm doing OK, asks if I need assistance with anything. If I'm needing help, make sure I contact her and, and everything else. She's very supportive in the things that I do on trying to build and become better. And it's slowly an adjustment. There's times like, for instance, I, I went to go set up a bank account and when I set up the bank account, I went into the bank and asked to use the bathroom. But their doors automatically lock, and I was in there crying because I couldn't get out. And, and ultimately it took a minute for me to try to see I could get out. And, and it's traumatizing and it hurts because ultimately all that anxiety from the past and the triggers of reoccurrence all comes back to those moments. And the best way for me to try to focus is just to relax and realize what's the task at hand. But a lot of times the anxiety is overwhelming to it all and, and it, it leads to us doing dumb things, ultimately. Yes, there's things that happens in seg as you'll see those pictures, those pictures are real. That's not a, that's not a fake image. It's, it's real. And it takes seconds to deteriorate in there. Those walls close in on you and it squeezes you and you suffocate and it's hard to breathe. Your heart paces up, and it's, and it's no wonder why you don't suffocate from just lack of oxygen in there because it traps you. Those days that they do cell extractions on those people, they spray the OC chemical agents in there. And it, it "toxicizes" everybody else outside of just the individuals that it's in, and, and it effects us and it burns us. There's so many things that they can do to help us through this processing time. But they, they, they don't. They say they're overwhelmed, oh, I've been here for 12 hours. I'm sitting in the office. I'm not doing nothing. Oh, there's not enough staff. I was on a triple escort, full-restraint process. I've been on almost every segregation status you could have. There was times that they told me I couldn't shower or I couldn't make it to the ER because they didn't

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have enough staff on the triple escort full restraints to take me to the shower. And, and to take me to the--

LATHROP: Senator Pansing Brooks has a question for you.

TIMOTHY LOPEZ: Yes, ma'am.

PANSING BROOKS: Are you done? Well, if you have--

DeBOER: Go ahead.

PANSING BROOKS: OK. Well, I appreciate your coming. Number one, it's courageous of you to come forward at this point. It's pretty early since your release, and so I know it's got to be really hard. And I hope you continue on a positive path.

TIMOTHY LOPEZ: Yes, ma'am.

PANSING BROOKS: Do you have a suggestion? Because our, our duty is to also protect staff and we want to protect staff. So do you have some sort of vision how your case could have been handled better if you were assaultive to staff? What, what is it that could have been done differently that would have helped you to be, to be able to maybe heal a little bit more or be able to handle your anger or frustration or gang involvement or whatever it is that, that caused you to be become assaultive? Help us to know, because we, we have to keep inmates safe.

TIMOTHY LOPEZ: Exactly.

PANSING BROOKS: We, we want to keep staff safe as well.

TIMOTHY LOPEZ: Yes, ma'am. See the training process of staff are to train machines versus humans at times. Those staff come in--

PANSING BROOKS: The training, is that what you said?

TIMOTHY LOPEZ: Yes, ma'am.

PANSING BROOKS: OK.

TIMOTHY LOPEZ: A lot of times it's like a machine versus a human, their contact issue-- contact with us are very minimal. If they say something that may be of sensitive nature or to agree with that they're automatically a corrupt or dirty staff. I've witnessed staff because I've have good, good, good, good rapport with a lot of them. As I grew up in there and I-- I'm like their institutional child as they would say. There would be times that staff has the skills and

tangibles that become more of what they've done and they won't allow them, they'll put limitations. But they'll try to go to the administrations, to, to the places that try to do more, to try to get more involved with things. And they'll tell them, no, because they believe it will lead to a personal level. I've witnessed several staff quit their jobs, tell them I'm leaving. Why? Because I can do what I want to do. I'm a case worker but ultimately I have to be just a cop, I can't do case worker work. I'm here to type in the computer and do count rather than do therapy and build projects with people. If you look at, at like LCC, when I left there, almost every housing in general population had designs and things formulated in them, the segregation was still the dark place. Ultimately bright colors, ultimately things in there could lower the moods. Also mind, mind altering things for positiveness could bring them back to that. The interactions with staff in, in allowing them to be humans together, even if it's in a dialog with other individuals, it becomes better. I witnessed a staff that was, was, in my perception, very rude and, and disrespectful at times, helped facilitate a program. And during that facilitation of the program, that staff was a human and not a staff member or a machine. And a lot of people had a different perspective of that. More engagement with programs with the inmates, allow them to see their perspective, allow them to be vulnerable and state the things in there. Vulnerability leads to accountability and new possibilities. And we could connect.

PANSING BROOKS: So were you released straight from solitary?

TIMOTHY LOPEZ: No, ma'am. I was released from the Diagnostic and Evaluation Center.

PANSING BROOKS: OK.

TIMOTHY LOPEZ: I was returned back to the Diagnostic and Evaluation Center from, from work release for an investigation, that later got cleared up.

PANSING BROOKS: OK. And were you in segregation the last-- during your last day at D&E?

TIMOTHY LOPEZ: No, I wasn't. Yes, I was-- so there was a situation that happened when I was returned back to D&E, there was a process that goes in there. And this will explain as to how there's a disconnectedness from it. I see-- I witnessed another inmate throw a deodorant bottle at another inmate and the staff come running in on an ERT call with their spray out cussing vulgarly, get the F on the

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ground now all you all, sprays in people's faces just like this, talking about get down on the, get down on the ground, like it's a game to them, like it's fun to harm a--

PANSING BROOKS: Spraying what?

TIMOTHY LOPEZ: Like their chemical agency, putting it in the guy's face all over another guy throwing a deodorant bottle in housing unit one, get down now, I'm not, I'm not f-ing playing. That's traumatizing. That hurts us. And you wonder why we get in uproars. I understand staff are harmed, and I feel bad for every staff that I ever hurt. I have remorse for that. A lot of times their actions trigger the reactions from other individuals. Their safety matters, too, as well as ours. And, and, and I'm more than willing to work with anybody to try to help come up with a program to develop those type of skills for communication.

PANSING BROOKS: So did you get programming or mental health help or any of that during this time?

TIMOTHY LOPEZ: During segregation, no, not until after my attempted suicide when they opened up the secure mental health program at the Lincoln Correctional Center.

PANSING BROOKS: So you'd been there seven years, basically? Is that right, Mr. Lopez?

TIMOTHY LOPEZ: Yeah. Yes, ma'am, yes, ma'am, it was 2009. But in, in 2016, I met somebody who was within the Department of Corrections who really helped me transform my life. Her, her-- she was my mental health practitioner. Her name was Krystal Kirby and she helped me through so much processes and stuff. She wouldn't give up on me like the rest of the staff would. She would fight with me through every process. When I felt harmful, she lowered herself down to help build me up. A lot of times the intentions of people when they come in through this process is they're already up here trying to pull us up there. But if we're too deep, they can't pull us out. So they just run off from it rather than making rope.

PANSING BROOKS: We all need people like that in our lives. And I think that your story is just indicative of how we are not doing corrections well, how we are not making our communities or our staff situation safer. If we would be less focused on retribution and punishment and more focused on love and compassion and kindness to those that are workers, as well as those who are within our prisons, we-- it's time

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to change this method. It is not working. So I'm sorry that you've been through all this and that's-- I'm done. Thank you. Sorry.

LATHROP: I don't see any other questions for you. Mr. Lopez, thanks for being here.

TIMOTHY LOPEZ: You're welcome.

LATHROP: Next proponent. Good afternoon.

BRIAN GAGE: Good afternoon. I'm Brian Gage, B-r-i-a-n G-a-g-e, and I'm here, as they say, representing myself. I have 34 years with the Nebraska Department of Corrections. I'm a national auditor for the Nebraska-- for American Correctional Association. I instruct at Southeast Community College in criminal justice programming. I spent-- I started out in Kearney back in '82 and I finished my career as warden at Tecumseh. I also was the warden at York. I'm also-- I guess, recognized for a number of years as the main one running segregation within Tecumseh. I want to thank Mr. Lopez for-- if he's here, for his, his statements that I guess I had a-- if I had to have a reason to be here today, that's why I'm here. I seen-- I'll just tell you as some of my days and we have that today, we are a bed-driven department with Nebraska. When you release-- when I used to have to release people from segregation because people were coming in, we had it-- what called kick out list. This group of staff met either once or twice a week to kick people out of segregation. Why? Because we just didn't have the general population beds to put them in. Senator, you have a bill also in reference to community custody, etcetera. I'll just tell you, I was around when they built Tecumseh. As soon as they got Tecumseh built, they filled it. As soon as they built the segregation unit there, they filled it. As soon as they built the community beds at CCC-L just recently, they've filled it. So the idea is how we're-- the department is still a bed driven. There were times in the process of segregation, and I understand because I have current students that are working for the department, also, I know some past staff recently with the department, the idea of lack of mental health, lack of follow up, lack of not just receiving medication, but not the therapy. Mr. Lopez testified, and I know there'd be staff that could also testify in reference to their post-traumatic stress disorder from working in a segregation environment. I think currently staff cannot see the forest because of the trees. I go to other states and I see what they do. I see the possibilities of what our staff does, and this bill is a good start. And I appreciate the senator, his adjustments maybe with the addendums, however you guys work with the, with the

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bill. But we need to do something because what we're doing is not working. With that, if there is any questions.

LATHROP: I'm betting there will be. Well, I got some for you. You were the warden at Tecumseh for what periods of time?

BRIAN GAGE: It felt for years. I think it's three or four years there at the, the last. I was a warden at York, really liked that, did a lot of great things, I think, because I had the flexibility because it was a women's facility and they kind of let me do a lot of different things.

LATHROP: Less overcrowding as well.

BRIAN GAGE: Less overcrowding. I had an inmate and I wish I'd remember her name but that would not be appropriate, but she spent years in segregation, lost years of good time, had assault charges on her, etcetera. I got there, I worked with her and I had experience with our mental health at Tecumseh. Luckily, we had good mental health psychologists there I worked with. We eventually got her to the star unit. We eventually got her slowly working out to the general population. And I was able to work with our director, was Bob Houston at the time, get her all her good time back, get her out to our general population.

LATHROP: Let me ask a, let me ask a, let me ask a question then. When you were at Tecumseh and the warden there, did they have a restrictive housing--

BRIAN GAGE: Yeah.

LATHROP: --the same restrictive housing unit that they have now?

BRIAN GAGE: Yes.

LATHROP: OK. So it served at least in a restrictive housing context it, it performed the same function then as it does today?

BRIAN GAGE: Then it was only single cell. Now I think all of its double cell.

LATHROP: OK. And you, you came here in support of this bill and you brought up a kick out list. What's the significance of the kick out list? Will you tell us what that, what that's--

BRIAN GAGE: Space. You would--

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LATHROP: So tell us what you mean by that or, or--

BRIAN GAGE: You'd have a fight over in, say, unit two, your segregation is full, you need to place the ones that are currently needing to be placed. You look at your number or the number of people you have in segregation, what are-- which ones are gonna be getting out soon, which one would we at least trust out in the general population, so we could get these two immediate in and then--

LATHROP: So let me ask this question in, in view of that answer, the kickout list sounds like you're picking through available beds in restrictive housing to find people who are suitable to go back into general population.

BRIAN GAGE: Yes.

LATHROP: Was restrictive housing used as a place to put people because you didn't have enough beds in general population? In other words, did it work the other way instead of pulling people out of-- kicking people out of restrictive housing to make room for other people that the department wanted to put in there?

BRIAN GAGE: There was sometimes we, sometimes we had to keep people in segregation pending bed space in general population.

LATHROP: For what periods of time?

BRIAN GAGE: That wouldn't be too long, but it could be a week or two time we had space.

LATHROP: OK. What access were these people getting to mental health care?

BRIAN GAGE: There was times, Senator, that I may have only a part-time licensed mental health practitioner. We-- I'd always get promised that we were gonna have a psychologist or more mental health people coming from Lincoln. And they would never come because they were busy. So this person was working really, really hard. But you know, just how, how we just had somebody speak, it wasn't [INAUDIBLE]. Somebody with mental health, it's not just medications and stuff, it's the follow-up treatment. It's the group therapy. It's all that kind of stuff. And we had a Dr. White make a recommendation that we concentrate only on severely mentally ill, because that's the ones that sue and that's the ones that can cause us as a department more problems. Really, it's, it's not just them, it's also the other ones that have struggled with mental illness, Bipolar II, manic depression that doesn't-- are not in

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segregation but still need the assistance. They're not the ones pulling out their hair, but there's sleeping 18-hour days.

LATHROP: I, I, I can't expect you to answer how are we doing today, but I'll ask you, during the time that you were there, do we have an overreliance on restrictive housing or did we?

BRIAN GAGE: I just spoke with-- I was at my daughter's cheer choir here the other day and I seen a psychologist that just left that I used to work with and I really respected, said the same-- basically the same thing is happening for her. And that's why she left, and she's very happy now, she's sleeping a lot better. And I told her I was too, because just the stress, because the lack of follow up, the lack of making sure not only the correct medication for the individuals, there's no misdiagnosis or those things happening. And also the follow-up care is just not there for those individuals.

LATHROP: So that's, that's a little bit different than the question I asked. I appreciate it nonetheless. And because this committee is very concerned about whether individuals who are in restrictive housing have access to programming, mental health care and the like. My question was, are we over relying as a department on restrictive housing?

BRIAN GAGE: Yes.

LATHROP: And why, why is that?

BRIAN GAGE: We have--

LATHROP: Why are we, why are we-- we've, we've had experts come in here and tell us we need to do less restrictive housing. Our numbers dip for a little bit, then they go back up or they rise. And now we're double-bunking people for, what, 23 hours a day?

BRIAN GAGE: We, we don't have any other choice, at least that's-- and again--

LATHROP: So why are we over relying-- what's driving the overreliance on restrictive housing--

BRIAN GAGE: What I see,--

LATHROP: --in your, your judgment?

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BRIAN GAGE: --what I see in other states is they-- like at York, if you're maximum custody, your roommate may be minimum cus-- or medium custody, maybe even minimum custody. If you're at Tecumseh or the Penitentiary-- half of our Penitentiary is minimum custody dormitories, six, seven, and eight and those type of things. What-- we're not seeing any other choice but to place them in segregation. Other states use like maybe the level system, a level five, instead of segregation. They're more in a controlled unit that's designed as a controlled unit. And that was kind of the hope when they started making some changes down in Tecumseh, but then this overwhelmed again with the overcrowding.

LATHROP: Are we putting the wrong people-- are we putting people in restrictive housing that don't belong there, or are we making people stay in restricted housing longer than they need to?

BRIAN GAGE: I think that's the-- your second one's more accurate. First of all, there's certain-- and I'm-- I know there's different laws that you guys pass in different-- the screening of who we put in there, but also who we left out. We're keeping them there too long. We're affecting them just like Mr. Lopez testified. We're having a dramatic effect-- it's kind of like, and I don't want to [INAUDIBLE] analysis of like youth or children or stuff is after so long, you're not getting the benefit of why you put them in there. You're, you're having more of a harm. And that's--

LATHROP: So why are they, why are they staying there longer than they should or they need to?

BRIAN GAGE: Because we don't have-- we do not have any other place to put them.

LATHROP: All right. That's what I thought the answer was, but-- yeah, well, thank you for that information. Senator DeBoer.

DeBOER: Can you go through with me and talk about some of the specific provisions that this bill would put into place and whether they're feasible for us? I take it you understand just Tecumseh but I imagine you could extrapolate to think about other correctional facilities within the department.

BRIAN GAGE: I haven't-- I don't have, I don't have the bill in front of me,--

DeBOER: I can, I can--

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BRIAN GAGE: --and I'm willing to look at the different details, etcetera, just assist whoever. But as far as the overall idea of it, I'm just telling you what we're doing now, obviously is not working.

DeBOER: OK so tell me-- one of the provisions is that we would have to limit restrictive housing to 90 days without a special hearing. Does that seem like a reasonable number of days to limit it to?

BRIAN GAGE: Yes.

DeBOER: OK. And then if an inmate is in restrictive housing between 15 and 180 days, they would need to have 4 hours out-of-cell-time. Is that a reasonable amount of time to have out of cell?

BRIAN GAGE: Yes.

DeBOER: And is that possible within Tecumseh currently?

BRIAN GAGE: No.

DeBOER: And why is that?

BRIAN GAGE: Staffing. The, the biggest thing is and I, I-- when I was there, I've even asked in reference to written policies and procedures, I always got told it's coming, we'll work it out, etcetera. Well, staff works with policies and procedures, they want to see it. That was one drawback. The other thing is Tecumseh is always, I guess, stress for staff. When you're working staff, you know, 12-plus hours a day, etcetera, it's, it's mind-- it just-- you get the tensions. It'd be like-- well, somebody asked me about overcrowding, and I don't know how many people can be placed in this room, but be thinking if the room would double the population,--

DeBOER: Yeah.

BRIAN GAGE: --how hot the tensions and stuff like that. And that's what happens with not only inmates, but also the staff that have to manage those individuals.

DeBOER: OK. So currently, do folks in long-term restrictive housing have adequate access to mental health and clinical programming?

BRIAN GAGE: I do not think so, no.

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DeBOER: And is that because they have-- do they have any access to long-term-- in, in long-term restrictive housing, do they have any access to mental health and clinical, clinical programming?

BRIAN GAGE: Yes, they, they did, and I would assume they still do, but still not as accurate and-- or not as-- not--

DeBOER: It's not enough.

BRIAN GAGE: --not taking care of their needs.

DeBOER: OK. And what about double-bunking? Currently, we understand that there is double-bunking in restrictive housing. Is that a problematic policy?

BRIAN GAGE: There's two things with double-bunking: general population double-bunks, inmates need to, to go back to general population. They're gonna be living with somebody. So you want that transition to be, be able to live with somebody else. OK. The other thing as far as-- and I've seen, I've seen studies, too, in reference to mental healthwise, it is better to have somebody while you're in segregation be able to talk to, interact. OK. The concern is, is how is used or if it's used just because you need the space. Is it used because it's a transition type to-- before you go out to general population? Is it used because of some mental health issue or is it just used because you need the space?

DeBOER: Right. So you're saying it's not always bad?

BRIAN GAGE: There are-- I've seen, I've seen studies, there's advantages to it as you transition or because of some type of therapy support.

DeBOER: OK. And the-- part of this bill would say that they would-- you would not be allowed to keep somebody in restricted housing for more than 365 days unless they committed a Class I or II violation, which I'm sorry I don't have in front of me, I don't know what that is, but while in restrictive housing. Is that a reasonable measure, 365 days is the maximum unless there's a I or II violation?

BRIAN GAGE: Yes, if they're utilizing maximum custody or a level five or whatever they want to call it, as far as the state uses, a controlled environment type of thing that they go into, not controlled as far as segregation, but a controlled environment where they can get a little bit more time out of their cell and interact with more individuals.

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DeBOER: Yeah. Sorry, I'm just making sure I've looked through all these. Looks like I have, those are the major provisions of the bill. All right, thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for being here, Mr. Gage. Is it doctor?

BRIAN GAGE: Not yet here, 10 more hours.

PANSING BROOKS: Good luck. Thank you. So first off, I'm really grateful that you came today, and it really takes courage. And I just think it's, it's really important to hear from all sides on this and somebody who's been so intimately involved in all of this. It's very important to hear your opinion. I guess a couple of things. First off, I had a question on the, the four hours out of the cell, you said there's not enough staff, not enough staff to put them in the dog pen or what-- or not enough staff to do what?

BRIAN GAGE: I, I know what you're relating to with the dog pen, right?

PANSING BROOKS: I'm talking about that outside run area like dog pens have at the humane society.

BRIAN GAGE: Yeah, I was thinking of the dog pens in what we have designed there, kind of the little yard behind the cell in some of the cells down there. That pen is--

PANSING BROOKS: That's what I was thinking of. They're like four-foot long outdoor things.

BRIAN GAGE: It takes a lot of coord-- it takes a lot of coordination and staff, for staff safety, of movement of inmates, et cetera, to that area. Also, if there's a disturbance in that area, you want to have enough staff to react.

PANSING BROOKS: To be there. OK.

BRIAN GAGE: The idea, again, it wasn't designed for that purpose. They kind of hurried up and did it. They need to have, if there's-- again, there is no pressure on them to make any changes. And that's why I'm kind of supportive of this bill in reference to it forces a department like Nebraska to make those adjustments and changes to really not only protect people like Mr. Lopez, but also those, the staff that sometimes feel that they're locked up too--

PANSING BROOKS: Yes.

BRIAN GAGE: --in those environments. And so that everybody goes home safely. But the thing is, is there should be additional space, there should be, I guess, different changes made. But again, it is staff-intensive. Every time you rise in the level with the security, you need more staff. That's why like community corrections, et cetera, it is less expensive, there's more because you don't need as many staff too. But again, very much needed.

PANSING BROOKS: OK. So my next question is, you said that staff doesn't understand this. What don't they understand? And so I presume you have alternatives that you're talking about, and I, I'd like you to speak to those. I think you mentioned going to Colorado or where did you see some of that?

BRIAN GAGE: I go, I just went to Montana and did an audit there. I've gone to Colorado numerous times, not only for training, but looking at their facilities and talking to their directors when I was involved with that. I've gone down south what-- to a number of states. The, I guess, for as far as staff, you know, when they opened up, started opening up the mental health unit at LCC, that really assisted individuals that, that didn't need to be in segregation. They needed to go to mental, the mental health unit. And I understand they're remodeling that area or expanding that too. Definitely needed. Tecumseh has always been behind because of staffing and because of, because of how it was designed. It's, it needed to adapt and change over the years. They've done a little bit of that, but the staffing has not caught up to the needs. And of-- it's not just the staffing, Senator. It's also that support mechanism, the professionals, the licensed mental health practitioners, psychologists that really they struggle with getting to that area or that facility. And that's kind-- and also how the other facilities are designed and purposed.

PANSING BROOKS: So what do you think? Because we're going to hear the argument that Brian Gage is right, we don't have the staff, so we have to keep the status quo. Because that's the only way to keep everybody safe, so we have to continue doing what we're doing.

BRIAN GAGE: I'm glad I don't have your job. The thing is, is, yeah, they're, they're right. They're not going-- they don't have adequate staffing. It's too bad. You know, if a magic wand they'd move this Tecumseh facility in between Lincoln and Omaha or Omaha or Lincoln, whatever else they could have staffed it right. As far as facilities go, it was right, just the wrong place. And then they closed Hastings,

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they closed the treatment center out the airport, and just to fill up Tecumseh. And they have struggled ever since then. What they need to do is look at, again, how they utilize the Lincoln Correctional Center, the Penitentiary, and those individual facilities, instead of sending them down to Tecumseh, work with them. The community beds is also to relieve that pressure, relieve that overcrowding with staff. They've probably-- what I've seen of their count, they've tried to keep the limit down Tecumseh about 1,200 or so inmates. They can take more down there because of the double bunking and stuff. They haven't done that, and that's probably for a reason. It's probably because of the staffing.

PANSING BROOKS: OK. Well, just one more thing. It's my understanding that the Department of Corrections sent out something saying that we are trying to get rid of solitary completely now. Of course that might be my goal, but that is not the goal of this bill, and I think it's misinformation to staff and other people that are highly interested here today. And I hope you know that is not the intent of this bill to get rid of it completely.

BRIAN GAGE: I did not see that in the bill.

PANSING BROOKS: Yes. So--

BRIAN GAGE: I, just like I told people, there's always gonna be people for the wall and people against the wall. We will all-- there is individuals that should never see society. They're locked up, they'll never get out, et cetera. I'm just telling you that people like Mr. Lopez, 85 percent of them plus national, nationwide and also Nebraska, are gonna get out in the next three years, 90 percent will get out within their time. But you always have that percentage in there. You're always going to have that percentage with, if you have a dream to get rid of restrictive housing, it is not going to happen. But how you manage it needs to be placed in policy, because if you leave it up to agencies or Nebraska Department of Corrections, trust us, we'll take care of it. I'm just telling you that you need to have it pretty clear in policy how you want it ran.

PANSING BROOKS: Well, this is not taking care of it, what we're seeing in these videos. So there's taking care of it and then there's compassionate care of human beings who will enter our community. And this is not happening right now. So thank you for coming today.

LATHROP: I don't see any other questions. Thank you. And almost doctor-- 10, did you say 10 hours?

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BRIAN GAGE: Ten hours left, yes.

LATHROP: Ten hours. OK, well. All right, thanks for being here today.

DANIELLE CONRAD: Hi. Good afternoon, Chairman--

LATHROP: Good afternoon.

DANIELLE CONRAD: --members of the committee. My name's Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today on behalf of the ACLU of Nebraska and I want to thank Senator Vargas for his leadership in bringing forward this important legislation. I have asked the page to to pass around a newly published white paper from our friends Mark Levin and Right on Crime at the Texas Public Policy Foundation that was just published in January 2020. And it's as most of their work, all of their work, incredibly well done. But what I wanted to pass it around for in regards to this hearing is to be very clear that solitary confinement reform is not a political issue. And it shouldn't be a political issue. It definitely shouldn't be a partisan talking point. So without meaningful reform, the status quo hurts us all. It hurts people like you've heard from already today who shared their very painful and very real lived experiences. You've heard from whistleblowers within the department who held positions of leadership about how broken the current system is. And what I'm here to tell you and to reinforce is that we have a human rights crisis in our prison system, and we have an absolute overreliance on solitary confinement. We have extraordinary lengths and duration for folks that are contained in solitary confinement. We have unacceptable racial disparities for those that are subjected to these human rights violations, and we have a lack of basic access to care and services for people that are incarcerated in these incredibly harsh conditions. So I think what is also important to remember is that, you know, when you look at the fiscal note on this, I'm glad the department was candid about what it would take to implement these best practices and common sense reforms. That, in my opinion, is an admission of deliberate indifference towards those that are housed in solitary confinement throughout Nebraska prisons. I think the other thing that's important to note as we look through this is that the Legislature has made continual progress in shining a light on these practices and trying to reform these policies and practices. But it has yet to really move the needle. And those actions are not a suggestion, they are state law. But yet here we are today. I also find it particularly perplexing and confusing that just a few weeks ago, before a federal court, the Attorney General's Office stood up and talked about how the Executive Branch is working in concert with the

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Legislature to bring all these robust reforms to solitary and push down the numbers. And it just doesn't bear that out in the evidence. Or when we hear that it's, when it's convenient for political purposes, the department puts a gag order in a la-- labor contract. The department puts down a gag order on employees being able to communicate to the Legislature. But then in the context of this legislation, they send out an email blast saying this is going to jeopardize your safety. Please speak out. My goodness. I'm happy to answer any questions. Thank you for your time.

LATHROP: We might be out of questions. Thanks for being here.

DANIELLE CONRAD: Very good.

LATHROP: Next proponent.

BRAD MEURRENS: You didn't think I wasn't going to have handouts.

LATHROP: Good afternoon.

BRAD MEURRENS: Good afternoon, Senator Lathrop and members of the committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I'm the public policy director at Disability Rights, Nebraska. We are as designated protection and advocacy organization for persons with disabilities in Nebraska, and I'm here today in brief support, but yet strong support of LB1208. I'll cut right to the chase. I've asked the page to hand out a couple things for you. First of all is a copy of my written testimony, which has, which has more extended remarks. And then a cop-- again, another copy of our report we did in 2014, which we examined the psychological and physical effects of solitary confinement, the importance of reentry programing-- which might also be beneficial for you to look at in terms of the second bill, LB768, I think, or LB786. And I think that that will be helpful in your deliberations on the bill, on the bill. We support the limitations and conditions that this bill places on the use of and duration of segregation. Given the significant impact restrictive housing may have on an inmate's mental status, both for inmates in the vulnerable population category and those who are not, we strongly support the provisions of the bill allowing inmates in long-term restrictive housing to have conditional or continuous access to mental health treatment and programing, as well as the use and duration restrictions. We recommend that the bill be passed or advanced.

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LATHROP: OK. I don't see any questions for you. But thanks for being here.

BRAD MEURENS: Thank you.

LATHROP: And for your testimony.

JASON WITMER: Jason Witmer, W-i-t-m-e-r. First, I would, I had turned in a written statement by the Diego Vazquez with copies. He'd sent it via messenger and I printed it out for him. And then I wanted to say that I am currently employed by the Mental Health Association. However, I do not speak for them or any other organization that I may be affiliated with. So my voice is my own, my experience is what I'm sharing and the lessons I've learned. And hopefully that can contribute to part of this process of solution. Now, my initial thing I wanted to do in testifying was share my experience for some understanding. However, I sat, too, and listened to Timothy, and I believe that with them pictures and with that sense and with your studies, you've got a sense of what happens in Nebraska's prison system and that restrictive housing. So what I would like to share is what I was going to get to in the point where I got to that point, because I've done about eight years combined total, a year and a half, year in solitary confinement. I got 20 years of prison. And so having got to that point where I was just destructive over and over and over, and I will add that I was in security threat group. I committed lots of violence, I've caused lockdown in the old county jail when I got transferred there, I've caused lockdowns in the prisons. So I was an inmate where I hear the prisoner that, oh, we won't let him out. He's not with reformable, he was a danger to society. However, I was there when Nebraska's prisons had an open yard, which seems like a mystical creature now, like a unicorn. But Nebraska's prison had an open yard. Breakfast time, we all came out. Guys went to do whatever. A fight happened, they broke up the fight. That was it. Stabbings rarely ever happened. Staff assaults usually came when they broke up a fight and caught an elbow. Or if it did happen to a staff, the person wasn't intent of terminating the staff, for lack of a better word. Safety, there was a lot of safety there. And I will say this, why? Because with that open yard and with me going in and out of the hole, I had got access to my peers on the yard and they had access to me. And the people who I thought where the darkness would come, the people who were doing prison sentences that were equivalent to the death sentences, that decided that they was going to invest in themselves, learn something, be a human, had been compelled to reach out to boys like me that just didn't get it or were lost and invest in me and pull me in over and over and over. Because it doesn't work just once,

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twice, three times. Sometimes you've got to work on a person. And they was there working on me until I was starting to get it, until I was starting to participate. Until years later, I was finding myself as one of them men that felt like I'm compelled to reach out. I was crossing boundaries with dudes, men that I-- we shed each other's blood, we would threaten to kill each other. We assaulted each other and then we start to come to this understanding of there's got to be something different. We start to come to this understanding that we're not on the separate team. And some of us even became friends. And I mean, there was a lot of violence between us that crossed some boundaries. And that time goes fast.

LATHROP: It does, doesn't it? Let's see if there's any questions for you. We appreciate the fact that you come and talk to us about your experience and different thoughts on trying to make improvements at the Department of Corrections. On the other hand, I don't see any questions for you today.

JASON WITMER: I could understand. It's been a long, long day. Guys are just sitting here.

LATHROP: We, we have two bills after this one too. But I, the committee appreciates the fact that you came down and that you waited and gave us your thoughts. Thanks for being here, Jason. Good afternoon.

DOUG KOEBERNICK: Good afternoon, Senator Lathrop and members of the Judiciary Committee, my name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k, and I am the Legislature's Inspector General of Corrections. And I'm here today to testify in favor of LB1208, and specifically on the part dealing with double-bunking. In 2017, Nebraska experienced a murder in a restrictive housing cell when two inmates were double-bunked. My report on this murder made numerous findings and resulted in a recommendation to immediately suspend the practice of double-bunking in restrictive housing units until the department's restrictive housing internal and external workgroups reviewed the practice and issued a recommendation to Director Frakes regarding that policy. Unfortunately, the department rejected that recommendation. A primary reason behind this recommendation was safety. First, safety for those who reside in a cell, a small cell where they live 23 hours a day with each other, where they sleep together, they watch TV, they use the toilet, brush their teeth, et cetera, over and over again. This can be very trying for any individual. And remember that people placed there are there for a reason. They're not the best of the best or anything like that.

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Second, safety for staff is also important. In the last couple of years, I've talked with many staff who share my concerns about their safety as a result of the double-bunking practice. Eldon Vail, former secretary of the Washington Department of Corrections, as part of the current lawsuit in Nebraska, submitted his thoughts on double-bunking and Nebraska's restrictive housing practices last year. I've handed out an excerpt from his report for your review. He expressed similar safety concerns as mine in his reaction to the response by department leaders, including Director Frakes, who worked in the same system with him. It should be noted that Washington, the state of Washington, does not use double-bunking. Those four pages of excerpts are valuable input from a correctional professional who's had a lot of experience in this area and everything. So it's just not me, just the guy who's been doing this job for four and a half years. But there's somebody who has a lot of respect for, by others. And he believes that. Another reason for this recommendation, and possibly the strongest one, is that the double-bunking of individuals in this setting in our facilities here in Nebraska is a violation of the standards of the American Correctional Association. The ACA comes in and does audits of the system and looks at each place and they have their standards that we're supposed to respond-- that we're supposed to adhere to. I've handed out an excerpt from my annual report that goes into great detail on this. Director Frakes has said in the past that he intended to comply with all the standards, but right now, because of the space of the cell and having two people in there, we do not comply with that, that standard. I think that handout has some very interesting information in there. Like Jason said, this time goes fast, so I'm going to kind of cut to the chase here. But one final thing I want to cover was the department has made some progress in reducing the number of people in restrictive housing. I acknowledge that, I support that, thank them for that. However, we also had a new unit created that has 64 men, and that's kind of like a restrictive housing-lite unit. So you've, you've dropped some numbers down to restrictive housing, but we also have this kind of different unit that has a lot of issues that I'm currently reviewing. And it's appears to be a precursor of the 384 bed unit that they're going to build here in Lincoln. My office, working in a cooperative manner with the Ombudsman's Office, due to the number of individual complaints from that unit, is monitoring that, like I said. I guess that's it.

LATHROP: Tell us about the, the, this, you called it restrictive housing-lite. What's that unit? Where is it at?

DOUG KOEBERNICK: It's in Tecumseh, it's in housing unit two. And it's unit 2C. And it's a general population housing unit, so it has like a

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lower tier of cells and then an upper tier of cells and like 16 on the bottom, 16 above. And they decided a few months ago that they would use that as, well, they created a separate program and they have a name for it. And I forgot what that is right now, but it's supposed to be people who may be transitioning out of restrictive housing or people who've caused some problems that they want to put there and maybe not go to restrictive housing. So they go there. The criteria set out in the program guidelines. There's some specificity to it, but then there's also kind of a catch-all that says: including but not limited to those things. So guys are down there right now. I've gone down there a few times, talked to them, talked to staff, and they're considered general population because they're getting out of their cells more than four hours a day sometimes. A couple of weeks ago, they got out nine hours for the whole week. So then they're really restrictive housing, but the department still considers them general population. But they're in general-- they're supposed to be in general population, but they don't have like contact visits. They don't get to go to religious services, they don't get to go to the gym. They don't-- they have canteen limits. They don't get to go to the regular yard. So there's a lot of restrictions on them. And then one of the problems, too, that I found so far and that I'm looking at, is that they don't know what their pathway out is. Nobody is communicating with them. I met with the warden recently down there. I also submitted a couple of pages of questions about the program to him. He said he's going to get that back to me rather soon. I'm hoping I get that one of these days, because I think that'll shed a lot of light on what they're trying to do down there. But I had a lot of questions on how that place is operating right now.

LATHROP: Are they double-bunked in those cells?

DOUG KOEBERNICK: Yeah.

LATHROP: And in order to not be restrictive housing, you have to have so many hours out of cell, and you said a few weeks ago they had a total of nine hours out of cell.

DOUG KOEBERNICK: Correct.

LATHROP: Is that a function of some emergency or is there an assault and so they don't let people out or, or why if you know, why were they not out anymore than nine hours in a week?

DOUG KOEBERNICK: I believe that was the week where there was a staff assault. And it was actually--

LATHROP: In that housing unit?

DOUG KOEBERNICK: In that housing unit.

LATHROP: OK.

DOUG KOEBERNICK: And it was a guy that I'd actually talked to just a few days before that, he's a young guy. He was pretty frustrated at the time about why he was there, he didn't know why he was there. And he was trying to figure out his way out. But he's had a lot of trouble in the past and everything. And he assaulted a staff member. But then he was removed from the unit but, and then the rest of the guys were all locked down for a long time.

LATHROP: I want to ask you a question about this bill or the point of this bill. It has a step down where people, if they spend a certain amount of time in long-term restrictive housing, they get more time out of cell, until eventually they are essentially not in restrictive housing any longer. Is that even a practical solution? I appreciate that it's a good idea that people can transition, that somebody who spends time in restrictive housing should have more and more time out of cell just for their own mental well-being. But can we accomplish that? If this bill passed, we wave the wand, the Governor signs it, and now these guys who are in restrictive housing are going to get four hours out-of-cell time instead of one. Can we do it given the plant that we have? And by that, I mean facilities and the staff that we have?

DOUG KOEBERNICK: Yeah, I think there's definitely challenges to doing that because of the physical plant and our staffing issues. I have two thoughts on that. One would be that I would recommend that some members of the Legislature go out to Colorado, see how they did it, talk to the people who actually implemented out there and ask Director Frakes and some members of the department to go out there. Because they can kind of explain. If they saw it out there, they can say to you, OK, this is what they have versus what we have. But then the Colorado people can say, well, this is how we adapted and everything. I mean, the fiscal note had some information in there-- or information about building kind of a 10,000 square foot facility. That's something the department has never talked about in the past when we've talked about how you would do this. So they're admitting that it could be done as far as the space issue, if you would do something like that at Tecumseh. As far as the staffing, what I would suggest is that the department take a couple of those units, those galleries at Tecumseh and try to get people out two hours a day at first and maybe three and

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kind of do a pilot down there. I think you could take a couple of the cells and, and do some renovations and turn those into some congregated activity space. You could do some different things, but maybe let's just, let's just give it a shot where we have one or two of those units and see exactly how it would work. How many staff we would need if we had to apply it to every place. Right now, it doesn't seem like there's any desire to do that. But they have also had staffing problems, but now they're supposedly getting more staff and helping with that.

LATHROP: These guys, we don't just hit a button from the control room and their doors springs open and they have out-of-cell time, right?

DOUG KOEBERNICK: Well, in Tecumseh they can do--

LATHROP: They literally go, they put them in handcuffs, and then they open the door and then they take them to, Senator Pansing Brooks called it the dog run, but the-- where they're, where they're able to go out and walk around or whatever. But they, this requires a couple of guys at a time, doesn't it?

DOUG KOEBERNICK: It depends. If, at Tecumseh, they can control the doors. So if guys are gonna take a shower, depending on the kind of the level of that individual, some of the units, they actually go down and cuff them and escort them down and everything. Some of those, they can pop the door, the guys go down, get in the shower. And then when they're done with the shower, they pop the door and they go back and they pop their other door. So there can be movement. At the dep-- at the Nebraska State Penitentiary, no. And that's where everybody's double-bunked is at the State Penitentiary, and that facility is not set up for that whatsoever. So there's a lot of challenges. One of the things that I was told recently when I was at the Pen was they tell the roommate, you got to go. They cuff him up, they put their hands and then they cuff him up. I think I have this right. And I know there's staff here that are going to oppose the bill, maybe they can clear this up for me if I'm wrong. But then they tell him to go back and get underneath their bed and then they let-- then they cuff up the other one and get him out. And then they have him come over and then they uncuff the one that was underneath the bed. So things like that, that's very staff-intensive, but that's because it's double-bunked and it's because of that actual facility was not designed. That was supposed to be a general population housing.

LATHROP: OK. I think that's all the questions I had, Inspector General. Thanks for being here today.

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DOUG KOEBERNICK: Thank you.

LATHROP: Anyone else here to testify as a proponent on LB1208? Seeing none, we'll take opponent testimony next. Good afternoon.

MICHAEL CHIPMAN: Good afternoon. My name is Michael Chipman, M-i-c-h-a-e-l C-h-i-p-m-a-n, president of FOP 88. I am testifying in opposition to LB1208. I am testifying in opposition to this bill because it would create an unsafe, unsafe working environment with the current prison infrastructure. This bill requires inmates to have four hours of out-of-cell time for inmates who have been in long-term restrictive housing and have been in there for more than 15 days, and six hours of out-of-cell time for inmates who have been there for more than 180 days. Currently, I just got done doing a tour with staff at TSCI and I asked him what would this look like. They told me that with the current facilities it would be impossible. Most of the long-term restricted housing inmates live in SMU galleries A, B, E and F. These galleries each only have two yards, that's two yards for 20 inmates. We would need a new, a new building to have to be built to safely accomplish what LB1208 is requiring. The state would also need to hire many more staff so they could escort these inmates. With occurring-- current staffing crisis, that would be nearly impossible to do. The only way with the current facilities that four to six hours of out-of-cell time could be accomplished is to leave the doors in the galleries open. Staff at TSCI told me that this was attempted many years ago. They told me that the staff assaults skyrocketed. I asked the staff that were working at SMU what they would do if the four to six-hour requirement was implemented in the current conditions. They made it clear to me that they would quit or transfer for the fear of their safety. To give you an idea of the dangers that these staff already face, I was on a tour for, for a few hours and an inmate was being transfer-- transported in the SMU. While this was happening, he punched the staff member in an attempt to get a hold of an edged weapon to further attack the officer. To put these requirements in place on our current infrastructure in the prison system would be catastrophic. It would make the staffing crisis significantly worse. FOP 88 is not against more out-of-cell time, but it must be done safely and with the infrastructure built for it. All right, that's it. Guess I'm short.

LATHROP: Senator DeBoer.

DeBOER: Hi. Thanks for testifying.

MICHAEL CHIPMAN: Thanks.

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DeBOER: So walk me through what infrastructures would be necessary in-- you know what, what sort of changes to the physical plant you would need to have in order to do this? Could you put in-- I don't like calling these dog runs. These--

MICHAEL CHIPMAN: Yeah.

DeBOER: What do you call them?

MICHAEL CHIPMAN: So, so they, they we [INAUDIBLE] dog run. They call them yards, so mini yards, I believe, is the technical term.

DeBOER: Mini yards?

MICHAEL CHIPMAN: Yeah. And so, so currently an SMU C gallery has many yards in each of the cells. So if you did have that for all of them, then you would get unstructured out-of-cell time. Now for the structured, correct me if I'm wrong, but it requires two hours of structure.

DeBOER: Yes.

MICHAEL CHIPMAN: So in order to accomplish that, you'd have to physically transport the inmate to an office. And I believe they only have a couple offices at SMU, don't quote me on that. And so that would be, with, with as full as SMU is it be almost impossible. You'd have to change on, change how you do it. I guess I haven't thought about how to pass, it's just not possible in the current way. It would be good to like look at-- I know they want to compare to Colorado. I'd be interested to see what their plants look like and how they're successfully doing it, because with our current plant, it's just not.

DeBOER: So what if we made more of these mini yards or, I mean, I assume that they're chainlink or some such thing?

MICHAEL CHIPMAN: So for the mini yards-- oh, they to my knowledge they, this door opens to the outside and they're able to just freely walk to the mini yard. It's connected to their cell. So the staff are never in contact for that, for that times. So then they are not, the inmates are not restrained during that time period.

DeBOER: So, so those are in, you said SM--

MICHAEL CHIPMAN: SMU's C gallery only has, only C gallery has it. A, B, E and F do not have that.

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DeBOER: OK, and so could we build mini yards adjacent to those other housing facilities that would operate-- I mean, yes, you'd have to obviously have staff involved with that movement.

MICHAEL CHIPMAN: Right. It would probably be possible to build mini yards to the side of it. I have to see kind of how it would be built, right? I'm not terribly familiar with it because I've just done a couple tours, so I don't want to say yes, it's for sure. But, I mean, in theory it would be possible. You would want it to, if you're trying to get them all that many hours of unstructured out-of-cell time, you'd want it to be connected directly to their cell, kind of like it is in C gallery. And I don't know, that would be a good, probably a good question to the director, not to put him on the spot.

DeBOER: Yeah, yeah, yeah. So where, so where do you work? So you're not at--

MICHAEL CHIPMAN: No. So I work at the Community Corrections Center of Omaha.

DeBOER: Got it.

MICHAEL CHIPMAN: I'm just the president for it.

DeBOER: Yeah.

MICHAEL CHIPMAN: I work at for it for, for four years at NSP, so I'm a little more familiar with their structure, which it would be completely, I mean, they, they have-- we're using housing unit 4, and I believe that was built in the mid-80s. So, I mean, it's just--

DeBOER: For the restrictive housing?

MICHAEL CHIPMAN: Yeah, for restrict-- that, and they have them double-bunked to my knowledge. And that, to my knowledge, they're using manual keys cell. So you actually are physically restraining the inmates, kind of like the inspector was describing. So it's very time-consuming to move them.

DeBOER: So but if there weren't a sort of an issue with staff, there were enough staff to do it, would you be able to otherwise do it at NSP?

MICHAEL CHIPMAN: At NSP, I think, just because how old the plant is, no, but with Tecumseh is for-- you're talking just unstructured?

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DeBOER: I'm just talking unstructured.

MICHAEL CHIPMAN: OK, I'm sorry. I'm trying to think structured. For unstructured you could, if you had-- you'd have to have a lot of staff, but yeah, you could probably get it done. Another issue that got taken into consideration is, last last I remember, they have five mini yards, five or six mini yards, and three-- we call them, you know, just yards. They're a little bit-- they're about three times as big as the Tecumseh mini yards. So and you could hold-- the smaller yards are able to, they separate people so they'd be safe because what you want to avoid is a lot of these guys are in--

DeBOER: Right.

MICHAEL CHIPMAN: --segregation, right, for fighting with each other. So you, what you don't want to do is if they have a problem with another group, put them together and you have a lot larger issue.

DeBOER: OK. So the-- there might be some kind of a solution, albeit labor-intensive, for the unstructured time. Let's talk about the structured time now. You said that you would have to move them to an office. If there were a building or a facility or a classroom or something like that they could go to that was nearby to the housing unit, would that be something that was possible?

MICHAEL CHIPMAN: So you could probably, if you had them fully restrained. And again, extremely staffing-intensive, because you're gonna be taking them out of the, out of the cell you need to be three men per inmate with taking them out there. And then you would-- I imagine you have them in full restraints and, for better lack of a term, shackled down in those classrooms. That's how you'd have to do it. It would probably be possible that you, like I said, with our current staffing levels, I mean, there's no way with our current staffing levels. But you would have to add a lot more staff.

DeBOER: Yeah.

MICHAEL CHIPMAN: And this is me kind of shooting from the hip, like I said.

DeBOER: No, no, I'm just, I'm just curious about, because your concerns are that there isn't enough staff and then there is the facilities. So I'm trying to decide--

MICHAEL CHIPMAN: Yeah.

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DeBOER: --if we can make the facilities work. But then there's still the issue of staffing.

MICHAEL CHIPMAN: Yeah, with the current plants it would be very difficult to do it. You-- that's kind of why I-- you would almost have to create a new segregation unit. That's, that's why I'd be interested in how Colorado, I imagine that were more geared, their building was more geared for this. That's a guess, but that's--

DeBOER: And then what about the double-bunking? Talk to me about that. Is that just a problem of the overcrowding?

MICHAEL CHIPMAN: I believe like right now at NSP it is. From the information I received, it has a lot to do with the, the overcrowding at NSP. I have read some studies on double-bunking that if you, if you do the right classification and make sure mental health constantly keeping contact and staff are keeping in constant contact, that it does work. Because it does reduce suicide rates in restrictive housing. But it has to be done under strict parameters, right? Because you don't want, you know, incompatible people being in a cell together for that many hours a day together.

DeBOER: Do we have those conditions in place that would make it work?

MICHAEL CHIPMAN: So I'm not real familiar with the double-bunking at NSP currently because they just started double-bunking again to my knowledge recently. And so I just, I don't have the information to answer that properly. I don't [INAUDIBLE]

DeBOER: No, no, that's fine. So let me then ask you one more follow-up question about this, the shackling up.

MICHAEL CHIPMAN: Yeah, I'm sorry. I wish I knew.

DeBOER: No, I just--

MICHAEL CHIPMAN: Yeah.

DeBOER: How long does that process take?

MICHAEL CHIPMAN: So to put on full restraints, I would say, oh, it's probably three to five minutes per inmate. Because you got put on the hands and then you have to have them spin around, going through the full process for you. And then you have to put a lock and you have to put on there, you have to loop it around and put it onto their legs. And meanwhile, you have the staff keeping, you know, a hold of them or

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to make sure they don't attack you, like what kind what just happened here so.

DeBOER: So it's a three to five-minute process with two or three people?

MICHAEL CHIPMAN: With three staff. Yeah, for maximum. Yeah, absolutely.

DeBOER: OK.

MICHAEL CHIPMAN: One doing the-- and the other two making sure for control.

DeBOER: If we could do this in a way that made sense, right? If we had the staff and if we had the physical plant, would you object to the provisions of the bill, as you've heard them?

MICHAEL CHIPMAN: No, no. It's purely because-- the reason we're against this, purely our staff's safety. And that's because of the plant, absolutely. If you guys were, if they were to say, hey, we're gonna build a unit like X and it's gonna be specifically built for this and this is how it would work, we would be onboard.

DeBOER: So if we put the date by which this had to be enacted further out in order to make those accommodations to the plant, how would you all feel about that?

MICHAEL CHIPMAN: I think as long as there was a fiscal note attached to it, so we knew for sure it was going to be able to get built and it was in a manner that was reasonable, that the building would be built before it was enacted, we would be fine with it.

DeBOER: OK, thank you.

MICHAEL CHIPMAN: Yeah.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you so much for coming, Mr. Chipman.

MICHAEL CHIPMAN: No problem.

PANSING BROOKS: So again, I just want to follow up a little bit of what she, on what Senator DeBoer just said. So are you against this basically because we do restrictive housing so poorly right now and staff can't be safe because of the way we do it?

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MICHAEL CHIPMAN: So we're against it now, yeah, because we're so full in restrictive housing. And to add those more parameters would just be an unsafe in our current conditions.

PANSING BROOKS: OK. So that's a yes, I think, basically. And I also want to thank you because I'd never heard mini yard before, which is problematic. I've only heard dog run.

MICHAEL CHIPMAN: Yeah.

PANSING BROOKS: So we should use a more appropriate name when--

MICHAEL CHIPMAN: I agree.

PANSING BROOKS: --dealing with some of the human beings in our correctional facilities. If we had-- I'm just wondering if we had enough staff and some sort of different method as we're hearing about it in Montana or Colorado, I don't know if those are the right ones, and so that restrictive housing could be safer for inmates. Would you be here today if that's what we were talking about?

MICHAEL CHIPMAN: No, I would, I wouldn't let-- I think similar question if we were talking about--

PANSING BROOKS: So, so and you do not believe we're doing restrictive housing well, is that correct?

MICHAEL CHIPMAN: I do believe it is. We're overcrowded. I mean, there's no-- you can look at 160--

PANSING BROOKS: But beyond being overcrowded, the fact that we're putting people in for hundreds of days at times, and/or years, and that peoples' mental health is not being addressed and we're having people covered in feces and cutting themselves, does that seem like we're handling restrictive housing well?

MICHAEL CHIPMAN: I'd say no on those pieces. But there is sometimes the needs for long-term restrictive housing obviously for, like with this individual who is attacking, still constantly attacking staff.

PANSING BROOKS: We do. We need what we have now, but that doesn't mean that that's the perfect way, correct.

MICHAEL CHIPMAN: Agreed. Yeah, we're not doing things perfect.

PANSING BROOKS: OK.

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MICHAEL CHIPMAN: I'll agree with that.

PANSING BROOKS: That's-- I'm also wondering if you received an email encouraging you to be here today by Director Frakes.

MICHAEL CHIPMAN: Yeah. We all receive-- received an email telling him, you know, we're welcome to come.

PANSING BROOKS: OK, [INAUDIBLE] and I know that's what-- so I just hope you'll remind other staff that, as citizens, you all have the ability to come and, and to also talk to us as a citizen at any point. So we're very glad you're here today, and thank you for taking the time. And thank you for the work you do to keep our community safe. This was not intended to get rid of restrictive housing.

MICHAEL CHIPMAN: Right.

PANSING BROOKS: But it is an intention to deal with it and do it better. So thank you.

MICHAEL CHIPMAN: Yeah. And just for the record, we have been-- made it very clear to our staff they are more than welcome to talk to you guys. We've made that very clear as a union.

PANSING BROOKS: Good, thank you.

LATHROP: Senator Slama.

SLAMA: Thank you so much, both for your work and making the time to come down and testify today. I know you were limited to three minutes. I just wanted to see if you could expound on the dangers. I know we got pretty deep into a hypothetical there, but given the situation right now in our corrections department, the threat that this bill, if implemented today, would pose for our corrections officers. Because we have to operate right now in the real world and how this would impact our corrections officers in reality.

MICHAEL CHIPMAN: So in reality, if, if, if the one was flipped and had to do it in our current plant, no changes, it would be just like I said, it would be catastrophic, right? Because in order to get that, to meet those out of cell requirement hours, you would have to leave, leave a bunch of guys open. And so you'd have guys are very assaultive, you know, wandering around this gallery. And that would be catastrophic. Like I said, it's something [INAUDIBLE]. I don't know if that's the correct term. SMU west was trying it, and so that was a lot more free range. And our staff assaults skyrocketed and our turnover

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in that unit skyrocketed. One thing nice about, like, when I visited SMU is the staff are still fairly new, but they've been in that unit for at least a little while and they appear to not be turning over as quickly. And that's something good to see because, you know, when you're dealing with those difficult individuals, you want staff to know how to handle those situations. And so you, with this immediately going in, you'd, you'd lose that because it would be too dangerous for them frankly.

SLAMA: Thank you.

LATHROP: Mr. Chipman, I want to be really clear about this committee and the Legislature. No one is trying to put you guys in any danger. I think we've been very upfront in trying to resolve the staffing issue. We have pounded that drum since I got here. And, and hopefully the changes to your contract result in some improvement in the staffing conditions. And I appreciate your testimony is, given what we find ourselves in today, which is a little bit of a train wreck, it would be unsafe to implement this bill without changing the infrastructure and the staffing.

MICHAEL CHIPMAN: Yep. Correct.

LATHROP: OK. That's all I got. Thank you.

MICHAEL CHIPMAN: All right, thank you.

LATHROP: Next opponent.

DAVID LEIGH: Afternoon, my name is David Leigh, D-a-v-i-d L-e-i-g-h, I've been with the Department of Corrections for almost nine years. I currently work at the Nebraska State Penitentiary. Today, I am asking you to oppose LB1208. This bill put staff and inmates in more dangerous environment and simply makes us less safe. First, I'd like to talk to you about restrictive housing. With LB1208, inmates in restrictive housing would be required two to three hours of unstructured out-of-cell time a day. Inmates in restrictive housing are the most dangerous inmates, often in restrictive housing for violent assaults on staff and other inmates. These inmates put themselves in restrictive housing due to their own actions. Giving these inmates more out-of-cell time gives them more opportunity to assault staff and other inmates. When we go to feed these inmates one of their three meals a day, we open a hatch to their cell and hand them their food. On many occasions, these inmates take this opportunity to assault staff through the small opening in their door.

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Giving them more time out of their cell will give them more opportunities to assault staff and other inmates. Again, inmates in restrictive housing are the most dangerous inmates we have in our population. At the Nebraska State Penitentiary we, we have no more infrastructure to build more buildings and to really implement this plan, LB1208, as it is. We've built and built and built, we don't have any more room to expand yards and the types of buildings that this bill would need. It's also important to note that inmates in restrictive housing do have access to a medical and mental health professionals. Also with LB1208 it would require 15 hours out-of-cell time a day for our general population. This is not plausible due to us having to count our inmates, that population six times a day. Inmates need to be counted properly to ensure safety of inmates and the general public, also to ensure no inmates have escaped. I again am asking you to oppose LB1208. This bill makes my already dangerous job even more dangerous. The number one priority of an employer is to keep its staff safe. Please keep me and my fellow coworkers safe and oppose this bill. Thank you for your time.

LATHROP: Senator DeBoer.

DeBOER: First, I want to thank you for the work that you do. And as we've all been saying, know that we, we care about your safety. Do you currently work in the NSP restrictive housing unit?

DAVID LEIGH: I currently do not. I work at the Nebraska State Penitentiary. Right now under this emergency we, we're kind of everywhere. I'm somewhere different every day so.

DeBOER: OK, have you ever regularly worked in the restrictive housing units?

DAVID LEIGH: Not regularly. I've worked in restrictive housing on and off, but not on a regular rotation.

DeBOER: OK. Can you tell me, we've been talking about the mini yards in Tecumseh, and you have-- I guess I didn't fully-- I'm now thinking back through it and I'm not entirely sure I understand. And maybe I just need to come out and see again. But are there mini yards at NSP?

DAVID LEIGH: Yes. In housing unit 4, our restrictive housing unit, we have mini yards that the inmates get escorted out to the yards and they have a few hours each day to roam these mini yards. And then they're handcuffed and then they call a "come along" and then they take them back to their cell the-- another time.

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DeBOER: So you currently have them out there in these mini yards just one at a time?

DAVID LEIGH: We have to escort them one at a time. And once they're secured in a mini yard then we escort a new inmate out to the next mini yard. And so until pretty much it's all the inmates that want to be outside are in these mini yards.

DeBOER: How many mini yards do you have?

DAVID LEIGH: I'm not really sure. I haven't counted them.

DeBOER: More than four.

DAVID LEIGH: Yeah, it's maybe 20.

DeBOER: Twenty?

DAVID LEIGH: Yeah.

DeBOER: OK, approximately 20. And you say that there's not room to build additional things. And, again, I'll come out and visit, but is there no room-- I mean, they don't sound big.

DAVID LEIGH: So, yeah. So right now, actually, we are building a new unit. It's more of a minimum security unit for it's minimum-- we really don't have enough room to build anymore yard. Just there's not enough room. If there was room, it would be on the side of housing unit 4, that's where they're building the minimum security unit.

DeBOER: OK. What about the double-bunk bunking? What can you tell me about that, and have you found that to be a problem for the inmates in restrictive housing when you've worked in that area?

DAVID LEIGH: So they don't-- they double-bunk three out of the four galleries. And, and some, depending on, on their behavior, aren't double-bunked. That's just kind of recently they've started that.

DeBOER: Started which, the not--

DAVID LEIGH: The double-bunking.

DeBOER: Double. The double-bunking.

DAVID LEIGH: The double-bunking. I would be OK with opposing the double-bunking. I'm all for, you know, a single cell per inmate. That

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would be more safe. I think they've started the double-bunking because of running out of room.

DeBOER: You're running out of room in restrictive housing or just in general?

DAVID LEIGH: In general, just in general. We're-- we've been overpopulated ever since I've been there. We ran around 1,200 inmates when I first started, and now we're up to around 1,300. Those numbers haven't come down.

DeBOER: Right. And with the, I think we call it "modified operations"--

DAVID LEIGH: Yes.

DeBOER: --that you're under. You're still doing that now?

DAVID LEIGH: Correct.

DeBOER: At the--

DAVID LEIGH: The director said we would go about six months under this emergency situation, which will put us around May. And I think by then, hopefully, we have our staffing numbers back up to where we can go back to a more normal operation for staff and the inmates.

DeBOER: Have the restrictive housing inmates had their time out of cell limited more because of this modified operations?

DAVID LEIGH: For-- can you repeat that again?

DeBOER: So because of the modified operations, have the restrictive housing inmates been kept more in their cells than they were before the--

DAVID LEIGH: I think they're-- It's the same. The restrictive housing, I'm pretty sure, is run the same. It hasn't affected their, their daily operations or their out of time cell, they still go to their mini yards. We do have mental health and medical professionals that do go around and see them on a daily basis.

DeBOER: Do they do-- do the inmates in the restrictive housing go anywhere besides the mini yards, or is that the only place they ever go to?

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DAVID LEIGH: Go to the shower. If they need to see medical, if they need get an X-ray, we would escort them to where they needed to go.

DeBOER: But currently the-- barring some medical situation, and the showers are in the same facilities right? They're just--

DAVID LEIGH: Yes, the showers are right there. They still need to be escorted. It's still on the same--

DeBOER: Sure.

DAVID LEIGH: --same floor.

DeBOER: Yeah. OK, thank you.

LATHROP: Senator Slama.

SLAMA: Hi. Thank you again for your work and for taking the time to testify today. I just had a couple of concerns with this bill and I was hoping you could provide some experience and background knowledge. So it was interesting for me to read through this and see that the longer an inmate is confined to restrictive housing, the more free time they got outside of the cell. In your experience, have you found the inmates that are in restrictive housing for longer are typically those who regularly assault staff? That sort of thing?

DAVID LEIGH: Inmates that are in restrictive housing--

SLAMA: For longer, yes.

DAVID LEIGH: It's varied. They're assaulting other staff or assaulting other inmates, and they're also being disruptive in restrictive housing.

SLAMA: Sure.

DAVID LEIGH: It's based solely on their behavior, on how long they stay in strict housing.

SLAMA: So, in short, they're in there for a reason.

DAVID LEIGH: Correct.

SLAMA: Can you just expand a little bit on your experience with staff assaults with restrictive housing inmates. You mentioned in your statement some of these inmates can't even be served food without

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assaulting an inmate. Could you just go into a little bit more detail there?

DAVID LEIGH: Well, in restrictive housing when we feed them their meals, we open up a hatch and they sometimes will stick their hand out the hatch, grab staff, or they will throw urine and feces on staff and-- it's that restrictive housing. When we let them out for the mini yards or even the shower, they're out one-on-one with staff, even though they're shackled they can still grab our keys, grab our equipment. So those are some, a little bit that happens inside restrictive housing.

SLAMA: And that happens when staff is more or less exposing themselves. Those inmates get out of their cells, they're being moved, they're getting out and about much like the same activities that they-- we would see much expanded with LB1208's passage.

DAVID LEIGH: And I-- it is important to note that housing unit 4, restrictive housing unit, was never meant to be a restrictive housing unit. It's actually built for a general pop unit.

SLAMA: Sure.

DAVID LEIGH: It was built in the '80s, so it's not meant for restrictive housing. It's-- I think Tecumseh has a more restrictive housing unit where there, it's not staff-intensive. Housing unit 4, restrictive housing is staff-intensive with what you have to do just to take an inmate out to the shower and you still have that one-on-one contact with that individual and possibility of assault or something happening.

SLAMA: Could you expand a little bit more on what staff-intensive means?

DAVID LEIGH: It takes more staff to let an inmate out to the shower. You have to have two inmates on the gallery. You have to have--

SLAMA: Two staff on the gallery, you mean?

DAVID LEIGH: Two staff on the gallery. You have to have staff outside watching. It's, I think you need two to four staff to let them out to their-- to their mini yards. And then to escort them to our SNF, our skilled nursing facility, you need at least two more staff. And that's all because our units aren't set up for restrictive housing. If you had a specific restrictive housing unit, you wouldn't need staff

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shackling, handcuffing an inmate and escorting to the shower. You would pop a door and he could go to the shower on his own.

SLAMA: And I mean, those assaults happen regardless of the number of staff you have, right? It's still the one-on-one contact, shackling the inmate, moving them personally.

DAVID LEIGH: Yes. The inmates-- we'll, we'll still have staff assaults whether we have minimum staffing or we have extra staff. It will, it will happen, no matter what, unfortunately.

SLAMA: Thank you.

LATHROP: Mr. Leigh, did I understand that you have limited experience with restrictive housing?

DAVID LEIGH: I guess you could call it that, yeah.

LATHROP: OK. In other words, that's not where you're regularly assigned. But once in a while when you were at the Pen, you've done some time, worked in restrictive housing some.

DAVID LEIGH: Correct.

LATHROP: But that's not normally where you're at?

DAVID LEIGH: It's not where I'm normally posted, no.

LATHROP: OK. Do you have enough experience with restrictive housing to tell us, are all of these people on restrictive housing assaulting people when their food is being delivered?

DAVID LEIGH: No, not all of them.

LATHROP: OK. So I want to be careful not to generalize to the point where everybody in restrictive housing should be there and they take every opportunity to assault staff, because that's not the case.

DAVID LEIGH: Correct.

LATHROP: OK. You were invited to come here by the director?

DAVID LEIGH: Yes.

LATHROP: Did the director share a plan for resolving the staffing and the facility problems that make this bill a bad idea?

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DAVID LEIGH: Not to me personally, no.

LATHROP: Are you aware that there's a plan out there somewhere, somehow to fix this problem, to make the improvements that are found in LB1208 practical?

DAVID LEIGH: I haven't heard any.

LATHROP: I got to tell you, and I'm not picking on you, but here's my frustration. So this Legislature can see a problem, thoughtful senators introduce bills with ideas. And here's, here's what we end up getting: Can't do that. Don't do that because you're gonna sacrifice safety. Well, why is that? Well, we don't have enough staff. Right? We don't have enough facilities, we don't have the proper facilities. We can't tell-- we, we haven't been offered a plan. We got a fiscal note, that's the closest thing to a plan we've seen. We have, we talked to the director, we try to get information out of the director during bill hearings or whenever we can catch him to testify. And there's no plan. And for the staff to come in, I fully appreciate that you guys are concerned about your safety and that this is not practical until some other things change. But, but it assumes, it assumes that nothing is going to change. That's sort of a working assumption in this whole opposition, which is: Don't do anything because we're going to sacrifice staff safety, which we-- this, this committee fully appreciates. The problem with it is somebody needs to tell us what needs to happen so that these people are treated humanely, that we do something. We need a plan. And every time this the legislators offer up a solution, it's like, nah, that's a bad idea. Somebody is gonna get hurt. You guys don't understand what we do over there. Somebody is going to get hurt. We do understand what you do. But we need some leadership. We need a plan, we need some ideas. We need somebody committed to ending some of these practices in restrictive housing. And I appreciate some people need to be there, but not everybody needs to be there. I'm pretty clear on that. And the people that are there, many of them don't need to be there as long as they are. And I don't know how two grown men can spend 23 hours a day in a room the size of a bathroom. Seriously. It's not much bigger than the bathroom in your house, probably.

DAVID LEIGH: It is a very small space and--

LATHROP: It's a very small space, 23 hours a day. My guess is that probably no one in this room would say, I want to spend 23 hours a day in a room that size with their spouse, let alone another guy.

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DAVID LEIGH: And all of our units are-- were originally built for single cell.

LATHROP: Right.

DAVID LEIGH: None of our units are meant for double-bunking.

LATHROP: So we can agree that there is a problem.

DAVID LEIGH: There is a problem and--

LATHROP: There's a problem with double-bunking, true?

DAVID LEIGH: Correct.

LATHROP: There's a problem with these guys spending 23 hours a day in a cell. And, and the idea that somebody puts a bill in for them to spend a little more time out of cell or not spend so much time in restrictive housing with no due process. Some of these guys don't even know why they're there, right? Have you had conversations with some of the some of the gentlemen in restrictive housing that don't even know why they're there?

DAVID LEIGH: I would assume they, they do know why they're in there, they just don't want to admit it.

LATHROP: Have you had any conversations with somebody that says, I have no idea why I'm here?

DAVID LEIGH: I do have conversations with inmates who are there: I don't know why I'm in here. I don't know what I'm doing in here.

LATHROP: OK. Well, you don't know that they know. You just know they're telling you they don't know.

DAVID LEIGH: I don't know if they're lying or if they're telling me the truth.

LATHROP: OK. These hearings turn out to be very, very frustrating. Very frustrating. Maybe, maybe Senator Vargas's bill goes too far. And, and it certainly goes too far given our staffing and our facilities. Right? And we appreciate that. But the idea that we're not going to do anything to fix the situation, and every time we have a hearing the senators are told: You don't know what we do. We can't do it. And there you, there you guys go again throwing ideas out there that are going to sacrifice staff safety. We're trying to find

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solutions and we're looking for a plan. We're looking for a plan because it is, the fact that we have a problem is as plain as the nose on my face.

DAVID LEIGH: Now, I agree this bill might have some good, good deals in it, you know, a couple hours out each time. But logistically it just can't work--

LATHROP: Because we're too overcrowded and we're too understaffed.

DAVID LEIGH: It's the infrastructure. We don't have the actual buildings to do something like that. We would be more than OK to let them out for more rec time, dayroom time. But like I said, our--

LATHROP: Don't you think that would be beneficial?

DAVID LEIGH: Like I said, our housing unit four wasn't built as a restrictive housing unit and so it's--

LATHROP: Kind of part of the problem.

DAVID LEIGH: What?

LATHROP: Kind of part of the problem.

DAVID LEIGH: Correct.

LATHROP: All right. Senator DeBoer.

DeBOER: So as I'm listening to this, I'm kind of, you know, you've heard me. I'm trying to figure out how we would implement these sorts of things. It seems to me that the issue isn't that this, this bill is a danger, because arguably-- why don't you answer this question. Do you think that arguably, if you had more time out of your cell, you didn't double-bunk, these sorts of things, some of these inmates would be less violent with staff? I mean, assuming that you have the yards, you have the space, you have the staff. Now you're giving these folks that are in this restrictive housing more time out and they're not double-bunked, do you think that there's the possibility they would be less dangerous to staff then?

DAVID LEIGH: I'm not sure on how to answer that.

DeBOER: OK. Well, is your objection to the bill then not that the bill itself is dangerous, but that the lack of facilities at NSP for providing these kinds of opportunities, for having enough staff,

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having enough mini yards, having enough facilities is really the problem? Is that the problem?

DAVID LEIGH: It's, it's our infrastructure, we just don't have the building. The buildings aren't set up for a restrictive housing unit.

DeBOER: So the bill isn't the problem, it's the lack of infrastructure within the facilities.

DAVID LEIGH: It's not necessarily the bill. We could tweak it a little bit and make it better. But yes, it's the infrastructure. We don't have the buildings to do a restrictive housing unit the way this bill is set up.

DeBOER: I really appreciate your testimony and I appreciate you coming. Appreciate the work that you do and helping us try to figure this out so that we can find the best way to do this, make you guys safe and do the best we can for the inmates as well.

DAVID LEIGH: Thank you.

LATHROP: I think that's it. Thanks for being here.

DAVID LEIGH: Thank you.

LATHROP: Good afternoon.

JERRY BRITTAIN: Good afternoon, Senator.

LATHROP: Evening.

JERRY BRITTAIN: Yeah, getting there.

LATHROP: Good evening.

JERRY BRITTAIN: Every time I find myself in front of this committee, it seems like it gets set later and later.

LATHROP: That's how they go.

JERRY BRITTAIN: I'm Corporal Jerry Brittain, J-e-r-r-y B-r-i-t-t-a-i-n. Couple of things, just so you get to know me, I am on the FOP board. I've been in corrections for almost six years, and I ran a restrictive housing unit for a solid year. So a couple of notes and then I'm sure you're going to have some questions. First off, we do talk about prison isn't pretty, right? That's just the nature of the beast. It's an unfortunate thing that we have to have in our

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society. I'm not going to tell you restrictive housing units are prettier yet, OK? As far as what we do, some of the former inmates I worked with while they were incarcerated, they mentioned training in chemical agents. I'm actually a crisis intervention and conflict resolution instructor, along with the chemical agents instructor for the department. I can assure you that we do not encourage staff to use chemical agents on a daily basis for behavior purposes. That is a tool to be used as a somewhat last resort before lethal force needs to be utilized. As far as the verbal training goes, we spend three hours getting people used to the inmate population and how to de-escalate those situations. So I just disagree with the earlier testimony that we don't train our staff to respond correctly as far as communication goes. As far as the treatment in RHU during the year I oversaw my unit, mental health and physical health came through daily. I believe, the last time I checked, they were coming through at least twice a day when it comes to physical health. They've talked about Colorado being a pathway to success. And it's my understanding that Colorado was already built for a more maximum style of inmate. So they had infrastructure in place. I know you're probably tired of hearing about infrastructure, but the fact is, if we put the cart before the horse, we're going to be in the same puddle 10 years from now. Double-bunking keeps coming up. Double-bunking, if done correctly and for the right reasons, can save lives and it can be a useful tool. I'm not saying, well, we don't have bunks in GP, so let's stack them up in RHU. But there are studies that show that suicide goes down significantly and mental health is more stable with a cellmate. I also got to tour TSCI, I worked there for a little while during our special detail. And I want to tell you a little bit about housing unit B, lower, lower B. It's where probably the worst of the worst offenders end up if they choose to go down that path. It's where a fair amount of our assaults take place and it's where the assault happened Tuesday when we took the tour. Those inmates, Lathrop, to you particularly, sir, you said that most of them don't want to assault us or a fair number of them. There, there is a standing order that if you want to live on that housing unit, you will assault staff when you get the opportunity. That's just the way it is. It's been that way for a little over a year now. And if you don't take that opportunity, then you get jumped at their first opportunity. So it's not that all of them are bad people and want to assault us, it's that the living conditions have made, made it impossible for them not to. As far as the outdoor mini yards, you're, you're, you're basically talking about moving them from an isolated cell into an isolated outdoor cell. If you are talking about putting them all outside together, you're-- got a recipe for disaster. Every time we try something like that, it ends up with disturbances

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and staff assaults. What else? So with that, I'd like to think Slama for listening to our people down there at TSCI. There was, I don't know who anyone here has talked to that said staff wasn't concerned with this. Staff assaults are going to go through the roof if this kind of bill was passed. So we appreciate you listening to our members. Any questions?

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Brittain, for your testimony. I went through Tecumseh when it was a brand new prison. They had an open house for the public. So the housing unit that is segregation is unit what?

JERRY BRITTAIN: It's its own area. So if you go in--

BRANDT: It's a prison within a prison?

JERRY BRITTAIN: Yes.

BRANDT: Yeah. And, and so is that housing unit B, C, D?

JERRY BRITTAIN: So it's--

BRANDT: Or does it have a name?

JERRY BRITTAIN: It's called SMU or restrictive housing.

BRANDT: SMU, OK.

JERRY BRITTAIN: It's also where we have our, we have a death row wing, and they're labeled A, B, C, et cetera.

BRANDT: Yep, and I remember that. So the SMU-- and this prison is, what, 15 years old approximately?

JERRY BRITTAIN: Pardon?

BRANDT: The prison is 15 years old, approximately.

JERRY BRITTAIN: Yeah.

BRANDT: Something like that.

JERRY BRITTAIN: Give or take a few.

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BRANDT: If you had to build a prison today, would you build it like Tecumseh? Is that still state-of-the-art?

JERRY BRITTAIN: I would say no. For, for location, definitely not.

BRANDT: Not location. But, I mean, if you built a brand new one where the State Penitentiary, would you build it like, like Tecumseh?

JERRY BRITTAIN: I, I don't think so. I'm not an architect, nor am I a corrections major. But from what I've seen from working there, it's not ideal for this kind of progressive treatment.

BRANDT: OK. The SMU unit, if I remember correctly, had the little mini yards attached to those cells, and I think you could remotely open the door that they could walk out.

JERRY BRITTAIN: One wing does. One, C wing, if I remember correctly, the label may be wrong. There is one wing that allows essentially your shower is the first room of the cell.

BRANDT: Yep.

JERRY BRITTAIN: Then your living location is next, and then the yard is, is after that. And it is a small concrete area with a welded fence structure.

BRANDT: Yep.

JERRY BRITTAIN: But there is concrete the other, you know, the other dimensions.

BRANDT: In our current facilities, is that the best that we have for a restricted housing unit? I mean is that our most state-of-the-art as compared to the Penitentiary?

JERRY BRITTAIN: Yeah. I would say as far-- and I've been to almost every facility, certainly all the facilities that have this kind of restrictive housing issue. That is probably the best solution we have at this time. But if you take in the blueprints, it's just not feasible to-- just the construction alone would be astronomical.

BRANDT: So we are building a new facility out at LCC, I don't know what we're going to call this facility. And I don't know if you, if you've had an opportunity to review the blueprints. But I understand that's a maximum security prison. Is that by its very nature every cell is or could be restrictive housing in that, or that will have a

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restrictive housing unit? Maybe Director Frakes is the one to answer that, but we'll have a separate restricted housing unit in it?

JERRY BRITTAIN: From what I understand that the reason that will be maximum is because of our diagnostic center and our LCC merging and becoming this, this bigger facility, which they've always been attached.

BRANDT: Right. Yeah.

JERRY BRITTAIN: But we, especially when you have a new inmate that's never been in your system, you know nothing about, you're going to have the need for greater security with some individuals. And so I don't know if they're gonna make every cell in that facility equipped like TSCI with the outer yard area. But I would assume not due to, due to the structure. I mean, it's just not set up that way. Because they're sort of, from what I've seen, they're going to modify two existing buildings and maybe add on a little bit.

BRANDT: That's right.

JERRY BRITTAIN: So it's just not, from what I've seen of those two facilities, I don't think they're going to have that triple cell setup.

BRANDT: OK, and then here again, this may be a Director Frakes question. Because it's brand new construction, I would assume they would want the state of the current art in incarcerations, whatever that is, to handle this both from staff, inmates, and the public. Would you agree with that?

JERRY BRITTAIN: Yes. But keep in mind, I believe it's being-- it's, it's not all new construction, most of it is revamping of the current structures to structures.

BRANDT: All right, thank you.

JERRY BRITTAIN: Yeah.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming, Mr. Brittain. So I'm, I'm just wondering, do you work-- I'm sorry, I missed that part. Do you work in with some of the restrictive housing?

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JERRY BRITTAIN: So I did a year of restrictive housing. I currently do transportation, but I have worked at TSCI on special detail in their restrictive housing unit. And I worked very closely with the members that still do because many of the new staff that end up in the restrictive housing unit of TSCI are part of our special detail group, which is the buses that, I mean, most of the council is well-aware of that we ship out from Omaha down there. And I, I train those that, many of those staff and keep in fairly constant contact with to make sure that their need, their needs are being met.

PANSING BROOKS: OK. So does that training and-- or have you had training in mental health versus behavioral health issues?

JERRY BRITTAIN: Not in a formal like university sense, no.

PANSING BROOKS: OK. In any sense?

JERRY BRITTAIN: So the CICR program, I can speak a little bit about in that I am an instructor for that. And it, it's focused around how to de-escalate extremely aggressive situations before maybe a chemical agent or a more lethal measure has to be taken. And that training is given to all staff. And then they go through-- to be in the restrictive housing unit, they go through a little bit of a refresher course and training from a mental health professional to address the special needs of restrictive housing.

PANSING BROOKS: OK. What, what kind of things are included in that training regarding the special needs of mentally--

JERRY BRITTAIN: The portion I do is restating and specializing in scenarios that may happen in the physical limitations of a restrictive housing unit. So it talks about how to de-escalate someone from the other side of a cell. But also many of our restrictive housing areas are confined, so you have a very limited amount of time. There's not a lot of safety.

PANSING BROOKS: So just de-escalation is mostly surrounds physical contact and, and taking somebody, right? Is that right?

JERRY BRITTAIN: You mean like the hands-on techniques?

PANSING BROOKS: Yes.

JERRY BRITTAIN: No, no. The CICR is, is completely-- the CICR portion, that, that portion is covered under our HFRG program. It's the how to stop and restrain someone in the most safe manner according to their

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program. But the CICR program, which is also accredited, is all verbal skills, but also body posturing, body language, being aware of, of triggers that you may possess and how to work around them. It's not perfect, mind you, but--

PANSING BROOKS: I guess we just heard that, that, I mean, one of the staff who just came said they're worried about even passing food in. So I don't understand how we get to the point where we're opening the door and having somebody in distress. And even--

JERRY BRITTAIN: So you're talking about different levels of security, right?

PANSING BROOKS: OK.

JERRY BRITTAIN: So again, with Tecumseh, lower B segregation, those are where the most violent offenders tend to end up. And they have very confined restrictions on how we handle them.

PANSING BROOKS: When you say most violent, are those people that are not mentally-- that do not have mental health problems, they just have behavioral problems?

JERRY BRITTAIN: I'm not an expert in that field, but I think you'll find that many of our inmates have both behavioral and mental health needs.

PANSING BROOKS: OK. I would, I would presume that too, so it seems like that ought to be one of the highest, one of the things that would keep you most safe, is, is being trained in mental health and dealing with these people with these issues. As, as you've heard both from Mr. Witmer and, well, you probably didn't see the letter he passed out, but the discussions about people basically just completely breaking down. I presume that is not what you see as valuable rehabilitation for our inmates who, most of whom are going to be released into the community.

JERRY BRITTAIN: Absolutely not. And to kind of address that, we do have a system in place, although it may not be the most state-of-the-art or the best solution. But a mental health referral. We are encouraged to work alongside our mental health staff, I trained with many of them. And to give them those specialized needs, because it's unrealistic to have somebody in a corrections field handling the security portion and the mental health portion. It's just, it's kind of a conflict of interest and it's very hard to blend those two. You do not-- in my experience, it doesn't work well. If the inmate knows

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that your custody and you're the guy that the department is going to rely on to go in there and handle business if all other matters fail, if we have to use a physical restraint or some kind of chemical agent, et cetera, they're not real receptive to our mental health advice, if you will, or helping with their mental health.

PANSING BROOKS: So the protocol is lead with force and not lead with mental health help.

JERRY BRITTAIN: No, I'd disagree with that.

PANSING BROOKS: OK, well.

JERRY BRITTAIN: Usually--

PANSING BROOKS: I'm sorry, what did you just say then, because that's what it sounded like to me.

JERRY BRITTAIN: So the idea is that there's-- blending your mental health and your custody staff is gonna be difficult. You can train them with some techniques that we use in CICR, again for de-escalation and for very minor diagnosis, such as what you should do if someone is having a suicidal crisis. The steps we should take in how that policy works. But blending, making me a mental health counselor and a corrections officer isn't going to be effective.

PANSING BROOKS: I'm sorry, but I don't think that's what I'm talking about. We have things like the school resource officer bill that requires training of both the officers and an administrator at a school. So that doesn't mean that the school resource officer is going to all the sudden be a mental health expert, but they are going to be trained in the teenage brain and in mental health and behavioral health and implicit bias and all of those things. So it seems to me that there needs to be more training of staff in those areas, and that's something we should bring next time, clearly so.

JERRY BRITTAIN: I wouldn't have a disagreement with that.

PANSING BROOKS: A problem with that?

JERRY BRITTAIN: Yeah.

PANSING BROOKS: Good, I'll work with you on that. Thank you.

JERRY BRITTAIN: Yeah.

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LATHROP: Senator Slama.

SLAMA: Thank you, Chairman Lathrop. Thank you very much for coming to testify today and for being so open and honest. And I just want to clarify, first off, for the record, that any staff member at any point in time should absolutely feel free to contact any of our offices. I've just been floored by some of the reactions we've gotten from this bill. And I think those concerns are well-founded when grounded in the reality that you guys face every day. And I just-- I don't have a series of questions, I just wanted to clarify for myself and the record. So in the unit you referenced in your opening statement, under current conditions, inmates are expected to assault staff whenever they get the opportunity or else they'll face repercussions from other inmates because of that?

JERRY BRITTAIN: Yeah, so there is a, a security threat group that basically tells other inmates, the leaders of those groups: If you want to live on this block then you will take the opportunity to assault staff when it was presented. If not, there will be physical consequences to you.

SLAMA: And have those physical consequences followed for those inmates?

JERRY BRITTAIN: Yeah, usually they'll check in or go to PC, protective custody, they'll find their way out of that system because many of these inmates have homemade weapons, shanks.

SLAMA: Yeah.

JERRY BRITTAIN: Many of them are under the influence of drugs, which tends to lead them to be more erratic.

SLAMA: So you have guys going from-- going to protective custody from restrictive housing simply for the reason that they refuse to assault staff when given the opportunity to do so?

JERRY BRITTAIN: It has happened.

SLAMA: Wow, that is-- thank you very much, I appreciate it.

LATHROP: Mr. Brittain, you have people in, in the department in restrictive housing with shanks?

JERRY BRITTAIN: Yeah, you do. I believe you'll find when we do mass sweeps that we do find homemade weaponry.

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LATHROP: Do you? And, and drugs too?

JERRY BRITTAIN: It is unfortunately common.

LATHROP: Common. How often are you doing these sweeps? I'm not part of our tactical team with that. The director may be able to answer those questions a little better.

LATHROP: Think we ought to be doing more of them if people have shanks and drugs in restrictive housing?

JERRY BRITTAIN: So there's a line, right? I'm, I'm all for getting drugs and weapons out of the restrictive-- out of prisons in general.

LATHROP: I would think so.

JERRY BRITTAIN: But it has to be done with fresh eyes. If, if you just do this massive search every day or every week, that's when complacency and shortcuts start kicking in. Sometimes, you know, not intended. But the fact is--

LATHROP: When was the last time we did one?

JERRY BRITTAIN: I could-- I don't want to give you a date. It was relatively recently at NSP they, they went through--

LATHROP: How about what-- which one are you at, Tecumseh or NSP?

JERRY BRITTAIN: I'm actually at the Omaha Correctional Center now, but I work-- I have worked at TSCI and I work closely with that staff still.

LATHROP: The Omaha Corrections Center doesn't have restrictive housing, does it?

JERRY BRITTAIN: They do. It's small compared, and compared to NSP and TSCI. We do have a restrictive housing unit, but it is extremely small compared to.

LATHROP: OK. But these weapons that they have in restrictive housing and the drugs, you don't know the last time we did a sweep to it, say the Penitentiary?

JERRY BRITTAIN: I don't remember the exact date.

LATHROP: Well, do you have a-- was it a week ago--

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JERRY BRITTAIN: It was within a few--

LATHROP: --or within the last three months?

JERRY BRITTAIN: It was in a few months.

LATHROP: Pardon me?

JERRY BRITTAIN: It was in, within a few months, I believe.

LATHROP: Is this the time when the State Patrol was brought in?

JERRY BRITTAIN: That's the one I'm referencing, yes.

LATHROP: Well, we can-- we all know when that was. Has there been any since then to get to these shanks and the drugs that you're talking about?

JERRY BRITTAIN: So we do periodic searches as part, like a cell search. But I don't know the last time a massive search on that scale was done since that opportunity.

LATHROP: Has the FOP expressed concern to the director about the, the, the prevalence of shanks and drugs in restrictive housing?

JERRY BRITTAIN: Yes, and I will tell you that the FOP doesn't always see eye to eye with the director on how things are done. And we are pretty, I would say, aggressive when it comes to our staff safety. It doesn't mean that we don't want our inmates to be treated fairly and that we don't want them to receive rehabilitation. But I don't want to see the number of staff assaults climb with, with what this kind of bill would--

LATHROP: Trust me, nobody does.

JERRY BRITTAIN: I believe you.

LATHROP: Nobody does. That's all I have.

JERRY BRITTAIN: And can I add one more piece to that? If any senator or the department or the, you know, Doug Koebernick, any, anybody, ombudsman wants to sit down with the FOP and hear the ideas from our membership, they are more than welcome to.

LATHROP: Well, I've done it. I've done it.

JERRY BRITTAIN: And we've had a few--

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LATHROP: I talk to them when I go out there.

JERRY BRITTAIN: Yes, yes. And so we, yeah, absolutely. And so we don't have a problem with, you, you ask for a structured plan. We have no problem being a part of that solution.

LATHROP: We don't either.

JERRY BRITTAIN: We just don't want a bill like this to put our people at risk without hearing the actual outcome.

LATHROP: We appreciate that. We appreciate that. Believe me, we appreciate it. I think Senator Vargas makes a point with this bill. And yet again, here we are. The best anybody can do is say, don't do it because it won't be safe.

JERRY BRITTAIN: Well, I'll provide another opportunity, and that is if you want to do something like this, bring the FOP, the director, a few senators, and the other people involved, and we'll come down-- come up with a more productive plan, a safer plan for state-- staff and inmates. This, this bill just isn't it at this time.

LATHROP: You don't have a plan, though, right? I'm not missing something? You're coming here with a plan--

JERRY BRITTAIN: I have no, I have no magic wand in my pocket to solve the complications as far as staffing and overcrowding.

LATHROP: OK.

JERRY BRITTAIN: If I did, I would have shared that with you.

LATHROP: OK. Thank you.

JERRY BRITTAIN: Thanks.

LATHROP: Good evening.

SCOTT FRAKES: It is. Sorry I have to change that. Good evening, Chairman Lathrop and members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s, I'm the Director of the Nebraska Department of Correctional Services here today to provide testimony in opposition to LB1208. In 2015, the Legislature passed LB598, significantly reforming segregation practices in Nebraska. I worked with Senator Schumacher on the bill, helping to craft language that was outcome-focused and attainable. LB598 set the bar high, establish

any-- establishing that anything less than 24 hours a week out-of-cell time would be defined as restrictive housing. To this day, Nebraska remains in the minority of states that define restrictive housing by out-of-cell time and one of only a handful of states, states that sets the bar at nearly four hours a day. In August 2015, the Yale Law School published a report on the use of segregation in America. As one of the reporting states, Nebraska was second in the nation for the percentage of inmates held in restrictive housing. At that time, of the 5,162 people incarcerated in NDCS, 13.3 percent or 685 people were held in conditions that would be restrictive housing, and 173 of those were held in administrative segregation. Administrative segregation is utilized for long-term assignments to restrictive housing and managed at the facility level with little structure or oversight. Many inmates spent years in administrative segregation. This morning, there are 273 people in restrictive housing, 4.8 percent of our total population. The average length of stay in immediate segregation is 14 days, and 355 days for those assigned a longer-term restrictive housing. Prior to the passage of LB598, I reached out to the Vera Institute of Justice and asked them to include Nebraska in their national segregation reduction project. Having led a similar project with the Washington Department of Corrections from 2012-2015, I knew how important Vera's insight and assistance would be as we work to change segregation practices in Nebraska. Over the last five years, NDCS has worked hard to improve the use of and the conditions within restrictive housing. We now have multiple layers of oversight with a multidisciplinary review team managing the longer-term restrictive housing process. Every 30 days I personally review the cases of all inmates held in restrictive housing for more than one year. I review and respond to every inmate appeal of assignment to and retention on longer-term restrictive housing. I challenge you to find another state corrections director with my level of hands-on engagement in the restrictive housing process. We have full-time dedicated mental health staff assigned to our restrictive housing units at TSCI and NSP and LCC, and part-time resources at our facilities with smaller segregation units. We provide programing and we continue to work to expand our programing resources. We provide televisions, commissary, and other incentives. Over 45 percent of the people who are considered for placement in immediate segregation instead go to an alternative, less restrictive setting. Most often they go back to their original housing assignment. And perhaps most notable of all, we've been able to close the control units at NSP and LCC. These were restrictive housing units built at a time when segregation was used primarily for punishment and they had minimal space for out-of-cell activities. Our work is far from done. An important part of the solution is reducing

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the restrictive housing population while continuing to maintain the staffing resources currently assigned.

LATHROP: You can keep going.

SCOTT FRAKES: Thank you. This will allow us to increase out-of-cell time and access to prosocial activities. We must continue to look for and implement effective programming to address the behaviors that lead to placement in restrictive housing. LB686 goes into effect March 1st, ensuring vulnerable populations are managed differently with respect to restrictive housing. At NDCS we're never satisfied with the status quo and will continue to raise the bar when it comes to the use and operation of restrictive housing. What will not work is to subject the agency to legislation that creates policy language rather than expected outcomes. LB598 was successful because the Legislature and the agency worked together to establish obtainable outcomes. LB1208 was created without any consultation or input from NDCS and creates expectations that are completely unattainable. I have no doubt that the fiscal note we submitted is seen as an attempt to derail the bill, but what was submitted is our best estimate of what it would take to carry out the prescribed mandates. Even if funded as requested, I'm not confident we could comply with this legislation. You know we have staffing issues, you know we have physical space issues. You know, we've experienced a significant increase in violence against staff during 2016 and 2017. And we believe that a contributing factor was the misconception that inmates could no longer be held in restrictive housing for more than one year. We heard this directly from inmates. LB2018 [SIC] will decrease public-- sorry, LB1208 will decrease prison safety. It has the dangerous potential to increased risk to staff, inmates, visitors, and the public at large. What I will add very quickly to that is we've kind of focused on the out-of-cell time, but there's-- this is a very complex bill that covers a lot of issues, including the use of confidential information and the expectations for how long people can be held, et cetera. So it's much more than just having enough staff to get people out of cell. I'm happy at this point to try to answer any questions. Excuse me.

LATHROP: Start with Senator DeBoer and we'll work our way around the panel.

SCOTT FRAKES: All right.

DeBOER: We've passed last year LB739, which was Senator Vargas's bill. It became part of LB686. Part of that says that on March 1st, 2020, no

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inmate who is a member of a vulnerable population shall be placed in restrictive housing. Where are we at in complying with that bill?

SCOTT FRAKES: We've got the pieces in place to comply, and I'd like to think we're complying today.

DeBOER: Are there members of any of these categories: 18 or younger, pregnant, diagnosed with serious mental illness, developed-- developmental disability or traumatic brain injury current, currently in restrictive housing?

SCOTT FRAKES: There possibly are.

DeBOER: And are there plans to get them out of restrictive housing before March 1st?

SCOTT FRAKES: Within the constraints of the law. There is provision for people to be held in immediate segregation, even when they're vulnerable populations. So there is always the potential that [INAUDIBLE] assess and figure out the right thing to do.

LATHROP: Director, can you talk into the mike so I can hear you.

SCOTT FRAKES: Sorry.

LATHROP: That's all right.

SCOTT FRAKES: Yes.

DeBOER: So there is a plan to put that in place, obviously, within the rare exceptions. It also requires that the department promulgate rules and regulations to address risks for inmates who are members of vulnerable populations. Have you put those rules and regulations into place?

SCOTT FRAKES: No, not yet. But we will comply with the law.

DeBOER: And you'll have them in place by March 1st?

SCOTT FRAKES: I don't think the bill specifically said that they had to be in place by March 1st.

DeBOER: When do you think you'll get those in place?

SCOTT FRAKES: Within the constraints of the law.

DeBOER: Well, if it doesn't say March 1st, I don't know when--

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SCOTT FRAKES: There is, there is statutory language around promulgation of rules, and I can't quote it off the top of my head so.

DeBOER: Yeah.

SCOTT FRAKES: I'm just-- my legal department is working on it and I trust that they will keep me out of trouble.

DeBOER: So you know that there already has been work put into that?

SCOTT FRAKES: I know that we've talked about it.

DeBOER: OK. I might have some more in a minute, but-- well, actually, no. I do want to ask about this. I know this summer there was something that I saw going around saying that staff of the Department of Corrections were not supposed to testify at these hearings without your express permission. And then I saw some stuff today that you had specifically reached out to your staff members and told them to come and oppose this bill if they, you know, for their own safety, because it was going to be unsafe. Are both of those statements true?

SCOTT FRAKES: No, there's inaccuracies in both of those.

DeBOER: OK, so can you clear them up for me?

SCOTT FRAKES: So what I did tell staff is that before they testify on behalf of the department, they need to contact me or my chief of staff. That is the expectation. If they want to testify on their own behalf, absolutely. As a citizen of Nebraska, not a problem. And they can identify who they are and what they do. Just make it clear they don't speak for the department unless we had a conversation that's been authorized as such.

DeBOER: That's great to know. Good.

SCOTT FRAKES: Yeah. So that's that piece. The other piece was I shared the bill with my staff. I shared contact information. I said that I had concerns about the bill. But I asked just that they read it and make up their own mind. And that was all. And then I did again repeat that people are free to testify as citizens of Nebraska if they choose to do so.

DeBOER: OK. Have you ever sent a similar, I don't know, heads-up, I suppose, to your staff members about, for example, Senator Lathrop's bill about additional community corrections bills that went to

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appropriations a couple of weeks ago? Or maybe that was last week. It's hard to tell anymore.

SCOTT FRAKES: I don't remember if I've ever sent anything to all staff. I have sent communication to FOP, and in the past, NAPE, when they represented staff. Or actually in one case, I think both, because NAPE still does represent some of the staff at the agency.

DeBOER: So have you ever given them a heads-up to go and testify on behalf of the department or to give them a heads-up that they might want to look at a bill that would get more funds to you all?

SCOTT FRAKES: Not that I can recall, no.

DeBOER: And other times that you sent out sort of a heads-up to staff suggesting that they might want to check out a bill and possibly testify?

SCOTT FRAKES: Again, I didn't tell them to testify.

DeBOER: No, just possibly that, sure, they're free to do that. What, what are the general types of bills that you send those heads-up about?

SCOTT FRAKES: Ones that I think would be of interest to the line level or the staff of the agency. And I can't pull anything off the top of my head.

DeBOER: OK. I might have some more in a minute.

SCOTT FRAKES: OK.

LATHROP: Senator Brandt.

BRANDT: Soon as we get around. Thank you, Director Frakes, for--

SCOTT FRAKES: Senator Brandt.

BRANDT: Who audits your numbers? I mean, these numbers that you've got on here, does the Ombudsman or the Inspector General, do they have full access to all the same numbers that you give out?

SCOTT FRAKES: Everything in there, actually, you could find in the restrictive housing report that's sent to the Legislature each February. So those are updated so there will be a new report the end of the month that will--

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BRANDT: OK, so we had a reduction of 13.3 to 5.4 percent or 4.8 percent, which is, which is really good. But does that, is an apples to apples? I mean, did we have the same number of beds in 2015 that we're dividing by as we do in 2020?

SCOTT FRAKES: I use--

BRANDT: I think we've added beds, haven't we?

SCOTT FRAKES: Use the right denominator, numerator, whatever it is. But we-- 5,162 inmates and 685, I think it was that were in restrictive housing in 2015. And then today, seven-- 273 against 56-- what was it at, 5,640, I think, this morning.

BRANDT: OK.

SCOTT FRAKES: So, yeah, I tried to keep, trying to keep our math honest.

BRANDT: I see you had an increase of about 500 beds-- or inmates.

SCOTT FRAKES: Five-hundred inmates, yes.

BRANDT: I just wanted to make sure on that.

SCOTT FRAKES: So it was the ratio of the population at the time to the number of inmates held.

BRANDT: Let's talk engineering a little bit. And you heard some of the questions that I asked the previous testifier about our new facility out there on Van Dorn. Is that going to change things for us?

SCOTT FRAKES: It is, in so many ways. The phase one of the project both consolidates our healthcare so that we can increase the quality of service that we provide and do it more effectively, more efficiently. And it provides 32 behavioral health beds for the highest, most challenging part of our population that needs a very special kind of setting. So that's phase one, along with a lot of other components, tying the two facilities into one institution. The project that was funded last session, phase two, is the 384 bed maximum security general population. So they're not being built to be restrictive housing or segregation. They are structured so that it's possible that there could be progressive amounts of out-of-cell time or progressive amounts of freedoms, whatever might be their design. They are state-of-the-art. They have programming space on the units, they have a large accessible yard right off the unit. They have very

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large day rooms. They have all the things that you would want. And then they have all the security features that allow them to be operated safely for that highest-level population.

BRANDT: So these, these 384 beds, so what would be the ratio of restricted housing to these 384 beds, zero? Or there's going to be a unit in there of 10 or 50 or what?

SCOTT FRAKES: There's no restrictive housing within that space. That's not the intent.

BRANDT: So what do you do-- what are you gonna do when you have to put somebody into restrictive housing?

SCOTT FRAKES: Well, we have a small restrictive housing unit at LCC. And then if they're going to stay for a longer period of time, currently we utilize either NSP or Tecumseh. So part of our plan is, and has been since 2016, really the conversations started in the spring of 2015, is to drive our restrictive housing population down while maintaining the same resources we have, which is going to allow us to have more out-of-cell time and more freedom, more ability to deliver programing and things like that. Having these high-security beds that are built correctly, something that the system lacks universally today, is going to allow us to manage that part of the population that unfortunately often ends up in restrictive housing because we don't have a good place to put them. And that's the whole structure. I've talked about a unit that has sliding doors as opposed to pop doors that we control, not the inmates.

BRANDT: So these 384 beds, at the end of the day, how many-- and you've got how many prisoners in restrictive housing today in the system?

SCOTT FRAKES: Two-hundred seventy three.

BRANDT: Two-hundred seventy three.

SCOTT FRAKES: This morning.

BRANDT: OK. So if you had these 384 beds today, how many of those 273 would move over to this 384, do you feel?

SCOTT FRAKES: If it was open right now, oh, I'd like to think that there's probably, there might-- I'm really just shooting from the hip, so I hate to do that.

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BRANDT: Yeah.

SCOTT FRAKES: I'm sure there would be at least 50 that we could look at and say, you know, they could be managed in that physical plant.

BRANDT: I would think it would be more to take the pressure off of your Penitentiary and Tecumseh.

SCOTT FRAKES: Well, that would be the hope. So, again, driving down the little to-- total number would be equally helpful. Still, it doesn't do anyone any good if I put people in a setting where they have freedom of movement and they hurt others.

BRANDT: All right. Thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming, Director Frakes. We appreciate your willingness to come and talk. So of some of the questions I've asked, I'm just interested, what about getting more training in mental health for the staff?

SCOTT FRAKES: I wish I'd have brought some information on that because I did look at some a couple of days ago, but didn't get it deep enough of my brain to be able to quote it. So what I would offer is I would send you what we do now, so you would at least have a sense of the degree that we have committed and improved training for staff that work in restrictive housing. It's another area, though, where we can always get better. There's no doubt about it so.

PANSING BROOKS: Can we help you get better at it?

SCOTT FRAKES: It's not that I need more of anything except staff to fill positions and continuing to fund the requests that I make. And I know you're tired of hearing that, but that is the truth. Part of what I've talked about since 2015, and the conversation comes up and then it gets lost again. But its capacity, its capacity to move, its capacity to get things accomplished. Part of the reason that I didn't come in the door-- there's a couple reasons I didn't come in the door and immediately say we've got to build a lot of things. One was because the JRI work said today we should be at 4,560 inmates. Well, unfortunately, that forecast did not pan out, but that was their forecast, that in fiscal year 2020 we would be at 4,560 inmates. Imagine how good our world would be if we were having-- imagine how different this conversation would be if we were sitting at that. We're not. So that was one issue, to come in and say, we've got to build

more beds, build more beds, when there was a belief that we were going to bring our population down. And a commitment and, you know, all three branches of the government signed off on that. So that's one. The other piece was this agency hadn't built anything. It was 15 years, actually, in 2015. Now we're almost 20 years since the Tecumseh project. It opened 2001. I didn't have any expertise, I didn't have any capacity to even really start to build. So we started ramping up. Fortunately, the Legislature kind of said, come on, do something, so build that 100-bed unit. So that worked out well in so many different ways. So I really remain very grateful that that was kind of pushed at me. That allowed us to start building the expertise, figuring out how to do these things. Then we went, I went with the RTC project at \$75 million and pretty extensive and really complicated. Now we've got the 384 project. We've got the small unit at NSP. I'll be coming in with another request on this next biennium for sure. So you can only, you can only move this ship so quick and you can only get things done so fast. I can, we can, all of us can. Had we not struggled with the staffing issues like we have, we'd be, we would be farther along. There's no doubt about it. Had we not had the escalation in violence and a couple serious outlier events that really overshadowed a lot of good work, we'd be a lot farther along. And I say that to the population, the spike in violence from the population in '16 and '17 kept me from getting a lot of things done, because it's really hard to push that we need to do more programing and get more active with volunteers and do more out-of-cell time when my staff are getting assaulted. Good news is staff-- assaults against staff are down second year in a row.

PANSING BROOKS: So, so which is first? It seems like a chicken and egg problem a little bit to me, because it's a question of, of, you know, I mean, yes, somebody assaults so then they're stuck away for longer because-- and they're isolated for a longer amount time. We've just heard terrible stories about people who are being, in my opinion, inhumanely treated. And yes, other people would say, well, they, they did things that were bad, but that doesn't allow us to treat people cruelly. The U.S. Constitution requires that we treat people decently within our prison system as a state. So, I mean, we are worried about the staff and making sure everybody's safe, we're worried about the inmates. But it seems like more prosocial behavior leads to better outcomes rather than more punishment leads to a shocking realization that the inmates are all of a sudden more violent. I can't-- to me, and I believe you would totally agree with me, whether you can or not, but this method of taking care of people in prison who are mostly mentally challenged or mental-- or have mental health issues. And we

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know that it's a high and severe degree of mental health issue. But how are we helping them? How, how do you feel that we are making our society safer by just locking people away? Having them roll in feces? Throw it out, cut themselves.

SCOTT FRAKES: That piece I'm a little confused about. I don't know how that refers. Are you-- is that allegation specific to my agency or to a documentary that was made in another state?

PANSING BROOKS: No, that was, that was, that was in the Nebraska prison system. That was what the testimony was by Mr. Witmer. And we heard testimony from Mr. Lopez about how he was treated so. So yes--

SCOTT FRAKES: The short answer is we've gone from 13.-whatever percent to 4.8 percent.

PANSING BROOKS: OK, but still--

SCOTT FRAKES: Is there no acknowledgement that we're moving the right direction significantly?

PANSING BROOKS: That is positive, but where is the mental health?

SCOTT FRAKES: We have a full-time psychologist and three, no four mental health providers assigned to the Tecumseh MSU. That's their full-time work. We have programing going on. We are doing things so different than where we were. It's not like I've just been sitting around looking at it and going, gee, that's nice. I told you, I came here to make a difference in a lot of ways and this is one of the things that are important.

PANSING BROOKS: I'm aware of that.

SCOTT FRAKES: Yes.

PANSING BROOKS: And that's why I believe that.

SCOTT FRAKES: But the last piece of that is I've got 5,640 people that we are responsible for. I can say I am responsible, we are responsible for them. Nebraska decided they needed to be in prison and Nebraska has got to be responsible for what we do with them. And I have to balance.

PANSING BROOKS: Even if we're cruelly treating people.

SCOTT FRAKES: I don't believe we're cruelly treating people.

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PANSING BROOKS: You don't?

SCOTT FRAKES: No, I do not.

PANSING BROOKS: You think it's OK to leave people in a cell for 23 hours a day, no human contact. And that's just what happens.

SCOTT FRAKES: Well--

PANSING BROOKS: Is that appropriate?

SCOTT FRAKES: --I think that we're doing everything we can to make sure that we're as smart in the use of that and that we're not using it for punishment. We stopped using it as punishment 2016. That we have, again, it was a decentralized system with very few controls and very few poor-- really, no recordkeeping in 2015. Today, none of that's true. It's electronically-driven, we know exactly what's going on. I can quote my numbers because I look at them every single morning. Every week we have a team in my headquarters that meets and looks at these cases. Dedicated mental health resources.

PANSING BROOKS: OK.

SCOTT FRAKES: Are we done? We're not done. But to say that we are treating people cruelly or to say that we're putting people in inhumane conditions. No, I cannot agree.

PANSING BROOKS: If that's mistaken then I am happy to, to work more with you on this. But what was happening in the YRTC was cruel with people without lights, without mattresses, without-- without access to any other thing in their rooms. So, yes, I think some of this can be cruel and I'm not convinced. I would love to come and see how and be able to talk to some of these people, to hear what, what they are doing and what their lives. And I appreciate the fact that the numbers have come down. That is certainly positive. And I'm happy to help you in any way we can. I know you don't really want our help, but we will--

SCOTT FRAKES: I never, I have never said that.

PANSING BROOKS: OK. Well, good. Then I'll look forward to that. Thank you, Director Frakes.

LATHROP: Senator Slama.

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SLAMA: Thank you, Director Frakes, for coming out tonight and waiting all day. It's been a long one. I just wanted to add quickly for the record to echo Senator Pansing Brooks', I mean, just looking at your current data, comparing it to the numbers from 2015, 273 current inmates in our restrictive housing, divided by 685. That's a 60 percent drop. So I do want the commendation from this committee on the record saying nice work for dropping those numbers. That is impressive, especially over a five-year period. As you mentioned in your opening, this is a highly technical bill. We focused a lot in this hearing about the impact on inmates getting more out-of-cell time with restrictive housing. But we also talk, well, we haven't talked much yet about the concern I had in LB1208, which is a change in how we treat informants. Could you touch on that a little bit? What LB1208 would mean for changes in terms of how the department deals with informants?

SCOTT FRAKES: Well, I have concerns in terms of the sharing of information. We want to be transparent, but at the same time this is some very confidential information for very important reasons, both in terms of if it is shared in the wrong place, people can get hurt. And as I read the bill, I come away with the sense that there is a belief that we as an agency groom informants, that we pay informants, that we somehow go out and that's how we do a lot of our business. It isn't that we don't have some people that serve as informants. We don't pay them. We don't give them special anything. But there are people that share information and sometimes it's for their own benefit. Sometimes it's just because they don't want the drama around them. The main use of information that is, would be considered confidential is victims. If we take away the ability to protect the victims of crimes within our facilities, typically assault, but it could also be strong-arming or other demands, they're not going to come forward because they can't, because it would be unsafe. And then the bad behavior, the predatory behavior is just going to continue to escalate and the problems are going to get even worse. We have a serious issue in our system today with inmates demanding to see other inmates, they say paperwork or paper. It's their sentencing documents because they want to see whether or not they have an acceptable crime. Certainly anything to do with a sexual offense is not an acceptable crime. There's a few others in the whole pecking order that happens. So that's an example of the kind of behavior that we're trying to fight through. If people believe that they can't tell us in confidence who's doing it to them then it's going to continue because it won't be safe for them. There's more to it than that. But I think that's one of the highlights of it. It's an information that we need to protect. It's

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information that we owe it to the people that we are holding accountable, for lack of a better word, to make sure that they do have due process within the classification system. And we do provide that. But absent saying, there is the guy that said he hit-- that, that's who said you hit. That didn't come out right. Anyway, really short of identifying the victim, it's kind of difficult to give. I'm going to stop. I'm starting to just-- it's late. Heading in a circle.

LATHROP: 6:30.

SCOTT FRAKES: Yeah.

SLAMA: Just I have one more, just to follow up. Another thing that popped out to me, besides some of the other concerns I had that hasn't really been addressed much is the department's fiscal note on this bill. We've talked a lot about what kind of infrastructure we would need to actually implement this bill. And we've heard some hypotheticals today, well, if we built this in an ideal world. What would it take to get us there in terms of infrastructure, and could you just build up a little bit on that fiscal note?

SCOTT FRAKES: Well, I touched on the staffing and it seems high, but other-- some of my other staff have testified to what it takes to manage that population and do that safely. That's based on today's numbers, an estimate of 300 people. Yes, I absolutely want to drive that number down. And so that could ultimately drive down the cost, wouldn't take as many staff. But still today, to do it as written and to do it with the current population, it would take a lot of staff, staff that we don't have. The specific note in there around capital is tied to creating programing space for Tecumseh because there is none. The other thing that's not really, not spoken to, but in the master plan from 2014, there was actually identified, I think it's 160 bed new restrictive housing unit. I-- wasn't a direction I wanted to go, both because we had so many other capital project needs to address and because it was really my hope we didn't need it. That as a system, we didn't need to build new restrictive housing unit. If we can't double-bunk, we will have to build new restrictive housing space. We simply couldn't manage the population within what we have, not least not today as it sits. That's the most expensive beds you can build. I'm going to guess in today's world it's \$550, \$600 a square foot. And I'm not exactly sure what the square footage needs would be. But we're talking, we have a \$49 million project to build the 384-bed high-security unit. So I don't think it's unreasonable to say a new 160-bed restrictive housing unit would be at least \$30 million. Serious money. So it's unfortunate when they redid the Penitentiary in

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the '80s that they didn't build new restrictive housing space. On the flip side, built by '80s standards or '90s standards or even 2000's standards, the SMU at Tecumseh, it's not what we build today. We would build programming space and adjacencies in ways that would allow people to move and allow for safe group activities and things like that. None of our physical plant lets us do those things today. The last piece around that too, is the fact that the bill also defines general population in that 15-hour out-of-cell time. It put some standards that would make some of our current practices where we're trying to create transitional housing options, such as 2C at Tecumseh. We have a limited movement unit at LCC as well. Those would now be defined as restrictive housing. So it would be pretty tough to create something that looked transitional and stay within the parameters of the bill.

SLAMA: Thank you.

SCOTT FRAKES: Thank you.

LATHROP: Director, I have a few questions for you. On LB686, the bill that we passed last year that included Senator Vargas's bill on vulnerable populations, and you talked about your beliefs that we would-- you would meet that goal by March 1st, like 3 weeks away or whatever it is.

SCOTT FRAKES: Yes.

LATHROP: What have you done to identify people with traumatic brain injuries since that bill passed, if anything?

SCOTT FRAKES: Well, we--

LATHROP: How do, how do we know if somebody has got a brain injury or not?

SCOTT FRAKES: They do assessments when they come into intake. They do some initial assessments and that there's indicators that there may be cognitive impairment then they'll do additional assessments. And moving--

LATHROP: Are you doing any kind of screening at that initial assessment?

SCOTT FRAKES: There's a screening done by clin-- by clinicians. And then if there's a belief that there may be issues then it moves into an assessment tool, evidence-based assessment tool.

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LATHROP: So I may be jumping at a little bit ahead on my own bill. But, but let me ask this question just by way of background, because we are talking about restrictive housing. That is something that's an impending deadline in LB686. What screening are you doing for traumatic brain injuries, for serious mental illnesses and or developmental disabilities when somebody comes in D&E? Can you tell us what that looks like now and, yeah, let's do that. Start there.

SCOTT FRAKES: Well, I can tell you at a very high level, but you will have Dr. Deol testifying, and it's on this same exact subject--

LATHROP: OK.

SCOTT FRAKES: --here in a few minutes. And he can--

LATHROP: OK.

SCOTT FRAKES: --he can really map it out correctly.

LATHROP: I'll wait for that.

SCOTT FRAKES: OK.

LATHROP: I got another question for you. And this is a little bit unrelated to this, but certainly important to this, this committee. JFA came out with new projections, you shared that with me, I think a week or two ago. It has a watermark that says "draft" on it. Do you have any reason to quarrel with what they've said?

SCOTT FRAKES: No. We were supposed to meet-- this is Wednesday. We were supposed to meet yesterday with the contractors, the consultants, put the final stamp on it. But unfortunately she got sick. So we're scheduled for next Tuesday morning. And I don't anticipate maybe some little wordsmithing projections.

LATHROP: OK. The projections are something that in terms of information that would inform us as to what we might expect in the future years in terms of the population. And I'm-- the record doesn't reflect this. And I'm showing an upward trajectory, which is what the JFA report indicated. So I'm gonna ask you to do some math and I'm going to put you on the spot. If we are to maintain, and I'll just use 140 percent of design capacity, how many beds do we need to build every year, assuming we make no changes? We don't add any more crimes and we don't do any sentencing reform. How many more beds do we got to add to maintain 140 percent of capacity?

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SCOTT FRAKES: I can't. I'm not gonna do that off the top of my head. If you'd like me to get an answer back to you, I certainly will do that. But we know it's a-- they're predicting about a 2.6 percent trend line, if I remember right.

LATHROP: OK. And so--

SCOTT FRAKES: A couple hundred people a year, give or take.

LATHROP: So what would 2.6 percent, 2.6 percent per year, what--

SCOTT FRAKES: It was some, somewhere around 200.

LATHROP: So we're adding 200 people. We're at 160 percent of capacity. After we build the 484 beds we get somewhere kind of close to 140 briefly, don't we?

SCOTT FRAKES: Well, we have 550 beds total in construction and-- or design and construction. And last time I ran a number I thought I hit at like 140, 140-something, 142, 143, 144. But it was based on a smaller population. I think probably 5,450 at that time.

LATHROP: Even when we--

SCOTT FRAKES: Yeah.

LATHROP: My point, and it has nothing to do with restrictive housing, but I have you in front of me and we're gonna be talking about this perhaps as early as tomorrow. If we don't do some type of something to stop, to slow the garden hose down that's, that's aimed at your Department of Corrections, we will need to build just to maintain 140 forty or so percent of design capacity. We're gonna need to build 200 beds a year or we got to do something else.

SCOTT FRAKES: Yes.

LATHROP: And that's the one thing you have no control over.

SCOTT FRAKES: That's pretty much true.

LATHROP: How many people we send down there and how long they stay.

SCOTT FRAKES: Yep. But we are a under--

LATHROP: Is there a rule of-- pardon me?

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SCOTT FRAKES: But we're clearly as a state underbuilt. We have been underbuilt since at least the '80s, I think probably farther back. But we're underbuilt.

LATHROP: Yeah. And when we start debating all this stuff on the floor, I just want to go with information that's useful. Not, not to suggest that you're giving me not-useful information.

SCOTT FRAKES: Sorry.

LATHROP: But the point is, unless we're prepared to build 200 beds a year, we're just going to watch the separation between 140 percent of design capacity in our average daily population. That gap is just going to get nothing but wider.

SCOTT FRAKES: Unless there's some change in crime, in crime patterns. As a question.

LATHROP: JFA isn't predicting any changes in crime patterns.

SCOTT FRAKES: No, but they kind of have to base their predictions off of what they know, not-- they don't have a crystal ball so.

LATHROP: You know, what I found interesting in looking at the population projections going back to the first facilities report done in 2006, or at least the one that I-- almost every one of these things have predicted exactly, pretty darn close to what we're talking about. That, this isn't like somebody is pulling numbers out of the air, there's some science to this.

SCOTT FRAKES: Except JRI, they were the only one that had a different opinion.

LATHROP: Well, I think they had an opinion that, that assumed some different changes in sentence structures that didn't happen in LB605.

SCOTT FRAKES: That is true.

LATHROP: OK. I appreciate that. Senator DeBoer.

DeBOER: Sorry, I just, I thought of what I meant to ask you before. How do folks get out of restrictive housing?

SCOTT FRAKES: They are given behavior-- if they get longer-term restricted housing, so then there's some structure to it, they could be assigned to a program, the specific things that they need to

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complete. At the very least they're given a behavior plan that establishes what they need to do in terms of their behavior, interactions. Typically, we may have some low-level kind of-- just an activity that will help demonstrate a little better prosocial skills, because that's a lot of what we're looking for. We don't have any magic programming that we can give to people that suddenly makes them all better and makes them not be in restrictive housing. So the question is, will they stop the behavior that brought them there? Will they demonstrate reasonable interaction with staff and with others, that prosocial behavior? And do we believe their risk has come down enough that we can put them back in a less restrictive setting?

DeBOER: How did they-- so those sound like some, you know, a variety of factors. So there's probably some discretion--

SCOTT FRAKES: Absolutely.

DeBOER: --involved with that. So let's say I get sent to restrictive housing, apparently for asking too many questions. And I want to know if I have made progress on modifying my behavior. Are there reports made to me on, you know, well, you're doing better. We think that if you continue on this path, you'll be out in this amount of time. Is there some sort of feedback loop that comes to the inmates?

SCOTT FRAKES: There is. And I'm not going to tell you that it's everything it needs to be in every case, because it's like everything else that we do. There are some that do it better than others. But they get monthly classification meetings. They get monthly to begin with, I get things confused. All right, I won't overstate. Initially, they get at least a 90-day classification review meeting at the facility level, and then that comes to the central office multi-disciplinary review team where they're looked at. And this-- and that's why we end up with a lot of people are not doing significant, what we consider to be significantly long amounts of time in long-term restrictive housing, because that committee looks at people with the eyes of where can we put them? What's the least restrictive environment we can house them in? It's the same philosophy and the same set of eyes that we use across the entire classification system. There are people that are classified as maximum custody or level 4 security custody. There are people that are medium, there are people that are minimum, there are people in community. Those are all-- it's a combination of an evidence-based tool that gives you some input, a classification review that gives you some input, and to some degree, what are the other factors that you have to look at? Because there are so many variables we deal with in terms of protective custody needs

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and conflict with others and security threat group activity and programing needs and all those things. So the same approaches, the same ideas that we use to manage our entire population are applied to our restrictive housing population.

DeBOER: So would I ever be in a situation as an inmate in restrictive housing to not know for, let's say, a period of a month, whether or not I have an imminent release from restrictive housing date?

SCOTT FRAKES: I think so.

DeBOER: So how long do you think would be the longest period of time at which I would not know whether I'm getting in or staying in or getting out of restrictive housing?

SCOTT FRAKES: In the first phase, it would be 90 days. And then at the one-year point, it would be every 30 days.

DeBOER: So I could go for three months and not know when I might get out?

SCOTT FRAKES: Correct. Because it's not get out, it's promoted so.

DeBOER: Well.

SCOTT FRAKES: Get assigned to a least, a less-- and I realize there is this image of this as being punitive, being jail. It is. It is just another custody level within our system. I know it's incredibly restrictive and it's all of those pieces, but it's not-- you're not sent there to be punished. They're not sent there for punishment. They're sent there because we don't feel there's anywhere else within our system where we can safely house them.

DeBOER: And another thing that I sort of thought of. So you've made this progress to lower the number of folks in restrictive housing, and I think that's amazing. But now you're telling us you don't have enough room for people in restrictive housing, but you have significantly fewer people in restrictive housing. So how do we not now have enough room if you before had enough room for all of these larger number of people in restrictive housing?

SCOTT FRAKES: Because spaces that were used before, that were done in conditions that are-- that would meet the definition of restrictive housing are now general population. And we are, we were able to get-- protective custody in particular was a big part of our initial move. We had a large number of people that were being held on protective

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custody and were not getting four hours or 24 hours a week out-of-cell time. So that was the easy, low-hanging fruit, so to speak. We changed how we manage our protective custody population. We get them out of cell, something that's in most cases pretty consistent with general population for the rest of our system. Then we started working on the ad seg population and looking at some of those. And then it got muddled, of course by a serious event. First we had a serious event in May of 2015 and another one in March of '17. Identification that there was some serious security threat group issues. So, so that, that and honestly, I believe till I pass away that somehow there was this mythology that the new, that LB598 meant nobody was going to go to restrictive housing for any length of time. So it was OK to do things like assault staff. I don't think that's the only reason that contributed to it. But so all those factors led to a spike. Now we've brought it down. We were well over 400 at one point.

DeBOER: I suppose that if it's like the Capitol, where rumors can go around pretty quickly, that's also probably true in a prison and that may have contributed to that false information being spread around.

SCOTT FRAKES: Absolutely.

DeBOER: But--

SCOTT FRAKES: It wasn't just the population that believed that.

DeBOER: So what of our gains, in terms of lowering the number of restrictive housing, come from this definitional change of what we're defining as restrictive housing or not defining as restrictive housing and what of it comes from actual gains and reducing the use of restrictive housing?

SCOTT FRAKES: OK. So I think it wasn't a change in definition, it was a change in practice.

DeBOER: OK.

SCOTT FRAKES: So we were keeping people in protective custody in conditions that are today restrictive housing. There wasn't any statute before. So if they only got out for two or three hours a day, that was OK. But effective July 1 of 2016, if you weren't out of cell 24 hours a day, which we chose to just make it easy and say we need to give people at least four hours a day, then you're in restrictive housing. So we-- but that wasn't good enough. I didn't want people out for four hours and a minute. I said, protective custody needs to look like general population. So today they have programing, lots of

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out-of-cell time. Hopefully right now it's been more strict a little bit because we're on the 12-hour operational shifts. But that's for everybody, not just PC. We've got them working in kitchens, we've got our protective pop-- protective custody population looking much more like general population than it did in 2015.

DeBOER: That sounds like real progress. And I think that's great.

SCOTT FRAKES: Thank you. I think so, too.

DeBOER: But now, with respect to this other class of inmates that would be back then considered protect-- or restrictive housing and now restrictive housing, has there been progress on that front--

SCOTT FRAKES: I believe so.

DeBOER: --in terms of lowering the numbers?

SCOTT FRAKES: Yeah, I believe so. Yes, I believe so. Especially if you look at the entire picture and look at the fact that before it was pretty common if somebody went to what we call holding, they probably went to restrictive housing. You heard Brian Gage talk about the kickout list. We don't have kickout list anymore. We don't have a need for that. The whole purpose of the kickout list was just that. Well, if we're gonna put this person in then we've got to get somebody else out. And I used the same thing in Washington, you know, 15 years ago. It was a common practice. So we don't need that anymore, because now when people go to holding, that's for an assessment. That's the first risk assessment phase. And then that's when the shift sergeant, shift lieutenant, someone, it's typically one of those two, steps in and says, OK, what's the issues? What occurred? What's the conflict? What's the risk? Can I return you to your living unit? Can I put you in a different living unit? Do you really need to go to restrictive housing? If they go to restrictive housing, immediate segregation within 24 hours, the warden reviews all those placements. And the expectation is that the warden is going to do the same thing and go, really? Is this, is really where we need to have this person? Then within 15 days there's a review to determine whether or not the inmate can be placed somewhere in the facility, moved to a different facility. Is there a different option besides restrictive housing or will there be a recommendation for long-term restrictive housing? If the facility makes that recommendation and the warden signs off on that recommendation, that comes to central office where the multi-disciplinary review team, which includes usually either the head of behavioral health or the second in command and six to seven other

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people. Every Thursday morning they review all those and they make the decision. In 2015, those decisions were made at the facility level. There was no, there was no control. There was no record keeping to speak of. I shouldn't say no record keeping, but it was paper. Today, everything is electronic, our data is tight. So those are the, those are the differences. But again, we're not done. There's-- we're definitely not done.

DeBOER: So what's your next step? You say you're not done. What's the next step?

SCOTT FRAKES: Well, the 384 is a huge piece of that because we finally will have the right kind of beds to house that most challenging part of our population that today we just don't have good general population cells for. We have one 64-bed unit in Tecumseh. And because of the dynamics of really needing something transitional, that's what we're using it for. But that one gallery of 64 cells sort of demonstrates what the new housing units will look like, although the new housing units will be three times better.

DeBOER: So when we get the new housing units, is this bill even necessary? I mean, the pieces of it that include no double-bunking, are you have double bunking after you get the new beds online?

SCOTT FRAKES: I'd like, I would hope not, but I'm not going to make that promise right at this moment.

DeBOER: OK.

SCOTT FRAKES: I'd like to not, I'd like to think we wouldn't need to.

DeBOER: Are you going to have the ability to get folks out of their cells for four hours after the new beds come online?

SCOTT FRAKES: It depends on where our population is at systemwide, where our restrictive housing population is. I think that's a great goal to shoot for though so. But as you heard, we don't have-- none of our restrictive housing is modern state-of-the-art and, you know, structure to provide that. And I don't want to turn those 384 beds into a restrictive housing unit. I really want them to be general population with the right kind of security controls to make it safe, because that's the best answer. So if ultimately that all of those things contribute to where we get down to 150 people in long-term restrictive housing or restrictive housing in general, yeah, I think we could certainly get closer to-- I don't know if we can hit four hours a day. Because part of it, too, is if we're on a 16-hour shift

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of 16 hours of activity and 8 hours of the typical graveyard where nothing really moves, by the time you take counts and feeding and some other things that need to occur, best case scenario, you've got about 12 hours that you can work with for activities. So it's one thing in general population where you can open and let out large numbers of people to move. But in a restrictive housing setting where we'd-- I'd love to get to where we are able to let four people out. When I first started, we used to put eight people out in, in the segregation yard and most of the time it worked OK. Most of the time.

DeBOER: Yeah.

SCOTT FRAKES: Every once in a while it didn't work so good. But gradually the, you know, United States corrections went to that supermax kind of concept and created the isolation that now we're trying to move back away from.

DeBOER: So do you need more restrictive housing beds? Will you need more restrictive housing beds when we start to cycle back up on this trajectory of these projections?

SCOTT FRAKES: If you let me continue to modify and improve and build our policies and work towards the outcomes that we really do all want, I'm still willing to say today, no, I don't want to build more restrictive housing beds, because I know exactly what happens: You build them and they will come. If we can find better answers and better ways to do things and we have a minimal dependance on restrictive housing then we shouldn't need more of them. We are going to need more beds though, and again, my biennial request will reflect that.

LATHROP: Senator Brandt.

BRANDT: Thank you. This is a real quick question, and I think Senator Lathrop addressed this earlier. The, the answer just evades me. If everybody got out of restricting-- restricted housing tomorrow, the 273 inmates that we have in there, do you have enough beds to put them in outside of those existing cells?

SCOTT FRAKES: Yeah, and you're gonna love this. This is why I do have-- between the empty beds I have today across the system, and I don't know exactly, but let's go it's 100-- it's 150 at least that are true beds that are empty. If I emptied SMU, I would be able to implement what I tried to do in 2015. And unfortunately, it just

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didn't get handled well and it fell apart. But there's half of that unit is double-bunked.

BRANDT: OK.

SCOTT FRAKES: And it could be a general population living, you know, 200 beds, 192 beds. And it would be just fine if it was run as a general population. You know, not as a-- I'm not sticking 300 people in that building on restrictive housing. We have, we've tried to keep it somewhere around 160 if we can.

BRANDT: So basically, some of those cells could convert back to other cells?

SCOTT FRAKES: Yes, absolutely.

BRANDT: All right, thank you.

SCOTT FRAKES: And then, of course, NSP, as was said, unit 4 was, it was a general population housing unit. Looks just like 2 and 3 and 1. And it would, easily could be converted back if we didn't need it.

LATHROP: All right. Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thanks, Director Frakes, for answering all these things and for getting the numbers down. That's-- we are happy about that. So Senator DeBoer said earlier, and it's all sort of coming back from last year because it is a melee, that LB739, which was then rolled into LB696 [SIC], was solitary for vulnerable people. And children were also included in vulnerable people. So it's my, and I remember the department fighting sort of tooth and nail not to have that go forward. But if we did, it would have to be a March 1 date to ensure compliance. So you're now 17 days, less than two and a half weeks away from that deadline. So what is the plan for these people and these children?

SCOTT FRAKES: Well--

PANSING BROOKS: Because we've just passed a law. The Governor signed it today, and I'm very grateful, to make sure that children are not placed in solitary anymore in this state. So that is a victory, a huge victory. So I want to know what your plan is on this, because I just remembered that it's children too.

SCOTT FRAKES: We've been moving in that direction for the last three years. But we hadn't achieved the expectation of the bill. So, again,

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there is a, if necessary, we can place somebody in immediate segregation and then do what we already do. You know, assess from the moment that starts day by day. But really the goal, because right now, fortunately, I think we have six young men that are under 18. And so we have the ability to try some really creative ideas around that in terms of how we can manage them. So now you're gonna want me to get into more details, and other than knowing that I had the conversation and was satisfied that they have a plan to make it work and that we're not going to violate the law, that's all I can pull off the top of my head right now.

PANSING BROOKS: OK. Is somebody willing to come and talk to me or others who are interested about that plan?

SCOTT FRAKES: Yes.

PANSING BROOKS: OK.

SCOTT FRAKES: Yes.

PANSING BROOKS: Within the next week, two and a half weeks?

SCOTT FRAKES: No more than two and a half weeks.

PANSING BROOKS: OK, good.

SCOTT FRAKES: Maybe sooner. We have a new warden there, it would be great for you to meet her.

PANSING BROOKS: OK, I'd love to meet her.

SCOTT FRAKES: She's wonderful.

PANSING BROOKS: That would be great.

SCOTT FRAKES: I'm biased, I realize.

PANSING BROOKS: That sounds great. Thank you, Director Frakes.

LATHROP: She is, she is. I have met her. Wonderful. Wonderful--

SCOTT FRAKES: Yeah, really excited.

LATHROP: --person to be in charge. I just, I hate-- at the risk of starting another round of questions, I just want to ask one. Did I hear you say that some of the people who would fall into the category of folks in the vulnerable population who you need to get out of

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restricted housing by March 1st, that some of those people will go into immediate, immediate segregation?

SCOTT FRAKES: I just, I think what I said was that there is still that component within the bill. There is the use of immediate segregation is allowed.

LATHROP: I'm just, that sounds-- you, you can appreciate how it sounds. Like they're not supposed to be in restrictive housing, we can't get them out of restrictive housing fast enough, so we'll call it immediate segregation. Tell me that's not what you're doing.

SCOTT FRAKES: No, that's not what I'm doing. We already have promulgated rules around what immediate segregation is. So I can't play with those.

LATHROP: OK.

SCOTT FRAKES: And that's consistent with LB686.

LATHROP: Yeah, I don't have anything else, Director. And I-- looks like you're done on this one.

SCOTT FRAKES: All right, thank you very much.

LATHROP: Thank you. Anyone else here to testify in opposition to LB1208? Anyone here in a neutral capacity? And for those of you that are sticking around for LB118-- pardon me, LB786, I'm gonna give you five minutes. A kind of a five minute break because the bill LB1180. Senator Wayne's bill, will take, I'm told, five minutes. And that will allow everybody who's been sitting here an opportunity to go out in the hall or stretch your legs, that sort of thing. Good evening. Did you just start that? Start it over.

ROBERT WAY: That's fine, I won't need that much time, Senator.

LATHROP: OK.

ROBERT WAY: I just wanted to bring up one item.

LATHROP: Let's have your name and spell it.

ROBERT WAY: My name is Robert Way.

LATHROP: Robert what?

ROBERT WAY: Way, W-a-y, Senator.

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LATHROP: OK, thank you.

ROBERT WAY: I'm not testifying in representing anyone. I just wanted to remind the committee in March 18th, 2018, Joanne Young published a story in the Lincoln Journal Star, and the title of that story was: A Nebraska prison unit for veterans helps men rediscover honor and respect. And in that story, she asserted that 8 percent of the Nebraska prison population is veterans. And given the numbers that Director Frakes said, that would mean about 450 veterans are being discussed today. We've heard a lot of different words. We've heard inmates, convicted, criminal, I think has come up a couple times. But I think it's important to remember that, by the numbers, 450 people are veterans. And just cause, and this is just my opinion, just because you did something wrong, you're still a veteran.

LATHROP: It's a fair point, it's a fair point. Thank you, Mr. Ray [SIC]. We appreciate that reminder. They do have a pretty remarkable housing unit for veterans. The folks that are there, it's pretty much self-governing and it's-- good afternoon or good evening.

TIM KNIGHT: Greet, greetings, senators. My name is Tim Knight, K-n-i-g-h-t. First caveat, I am not speaking for any specific institution, but I've been employed with the state of Nebraska since 1978 in the mental health field. And I've about split that time, half of the Regional Center and then half at the Department of Corrections. First of all, I'm speaking neutral because I'm going to admit something that's rare in today's culture. I have not fully read the bill. Possibly I'm, I'm going to guess there's some people behind and in front of me that may not have as well. But also in today's culture there's a problematic push where people present themselves as experts when they have a significant amount of ignorance on a topic. And all we need to do is read our letters to the editor about mental health or the prison system and then we'll be edified by that. So I worked up with the Department of Corrections at the State Penitentiary up until a year ago in February, and then I moved over to the Lincoln Regional Center. I'm 66, and so I'm a little long in the tooth. I'm the dinosaur that you're going to hope that we can replace with new therapists. And I'm going to tell you that 20 years ago I predicted when I talked, I and some of the other cohorts talked with Carl Eskridge in the Ombudsman's Office. And I said, unless the wage disparity is addressed, you're not going to have therapists that are going to be able to provide help with this difficult population. And he's a nice person, very, very kind man. But we very quickly realized that we were talking with a person who didn't feel like he could do much there. I would offer, I don't think that there's anyone that's

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really going to do much with a therapist wage unless this committee, or one like it, called in the director of the Department of Administrative Services and takes a look at, you want to see some funky math. My state senator here, Patty Pansing, you want to see some funky math? Take a look at how they're determining the wage for master's level therapist. Provisionally licensed therapist starts at, and I got to get the new one, \$18.78 per hour. Many line staff, especially the Department of Corrections, not at the Regional Center where I work now-- many line staff make more than that, starting corporals, than the top wage, \$22.03. Governor Ricketts is encouraging state government to be run like a business. What kind of business would not attempt to be competitive with the counties which pay many dollars more per hour? And again, I'm not, I'm, I'm long in the tooth. I'm almost done. My wife makes more than me, God bless her. And so I don't have to worry about this. But I'm telling you, you've got a crunch here. You're talking about segregation, I've worked in segregation. A lot of the people here and the poignant testimony from the young man that had to live in segregation, I worked in seg, that was my post. I wanted to work there, and I wanted to make a difference there with the guys I was working with. It's very difficult work. And if what you're planning to do here, building up all of these new segregation beds, and I think that it's-- I loved your questioning there, because what are you gonna do if you get those people out to there and on all this? There's a shell game. It is kind of a thing going on here. OK, are you going to provide a good treat-- no, let's not hire the staff. Let's wait till we got a boatload of more inmates. And when I was working at the Penitentiary, the staff to patient ratio, so a licensed mental health practitioner was 1 to 178 inmates. That's not even close to what it was out at Tecumseh. It was, well, I'd have to retrieve my, you know, I was 1 to 243, I think. Work can be done in this environment. But you have to help us train up people. Senator Pansing Brooks asked about training. I authored the training. We used to do eight hours of training with persons that were hired in the Department of Corrections. That got truncated to four hours and we share, of that four hours, we share it with gangs. I authored specific training on working with the inmates in segregation.

LATHROP: Can I, can I stop you for a second?

TIM KNIGHT: It's tough, just ask my wife.

LATHROP: No, I already got that. I suspect you're going to get a question, which is fine.

TIM KNIGHT: All right, very good.

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LATHROP: And I know now you came in after I explained the light system.

TIM KNIGHT: I don't know the light system.

LATHROP: Yeah, I know. I know.

TIM KNIGHT: Wait a minute, I saw one of these in Mexico.

LATHROP: Clearly, you don't. You know what--

TIM KNIGHT: Thanks, thanks for pointing that out to me.

LATHROP: Yeah, yeah.

TIM KNIGHT: No, I'm--

LATHROP: I think you're gonna get some questions, and I think it will provide you with an opportunity to finish.

TIM KNIGHT: Brevity is obviously not my long-suit.

LATHROP: Hang on a minute, hang on a minute. Let's, let's let you take a question and then you can perhaps incorporate your thoughts into that. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr Knight, for sticking it out. You've been a therapist for-- in the system since, what year did you start?

TIM KNIGHT: I worked in-- I started working in what was called the "security building" at the Lincoln Regional Center in 1978. It's now called the Forensic Mental Health Services because we in mental health change the names of everything to make it more mysterious.

BRANDT: Sure, and moving out--

TIM KNIGHT: Thereby solidifying [INAUDIBLE].

BRANDT: Moving out of LRC back to--

TIM KNIGHT: Then over to the Lincoln Correctional Center. I work in the inpatient mental health program and inpatient sex offender program for approximately 10 years.

BRANDT: OK, here's--

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TIM KNIGHT: That's after 10 years.

BRANDT: Here's my question.

TIM KNIGHT: Very good.

BRANDT: My question is this, from when you started to today, do you see a difference in the prison population that you are taking care of? And what would that be? The main point.

TIM KNIGHT: And I did move away from, I've been away now for a little over a year.

BRANDT: Okay.

TIM KNIGHT: So I'm out of that. Yeah, there's some massive differences. What they call the criminal threat group or gangs, it's significant. That's a significant problem. And I don't think anybody is blowing smoke when they tell you that that's a problem. The inmates that I worked with, they tell me that all the time. Hey, Tim, they told me that I'd have to pay \$20 a week and give them all my psych meds if I wanted to stay living in general population. All the time. Or the guys that were checked themselves into protective custody would say, hey, I couldn't get my psych meds and I couldn't get money for my family anymore. Sure, yeah, it's a, it's a big problem.

BRANDT: OK.

TIM KNIGHT: I think, though, there's been some structural differences in the way we're addressing our problems. We had a 16-bed segregation unit at Lincoln Correctional Center back then. Sixteen beds. I didn't stutter. Thirty-two beds were at the Penitentiary, the whole Penitentiary. How did we do all that with so few segregation beds? Well, I think engagement with our population is, is one of the keys, as well as in segregation. Talk with those guys all the time. When you're asking how often do people get talked to, Senator DeBoer, mental health people see them all the time. You've mandated some of that. I don't begrudge you for that. But it's interesting that you're gonna mandate how often myself, a licensed mental health practitioner, is going to see a patient, but you're not willing to help us out with a wage structure that keeps the new therapists at \$22.03 an hour. I'm a dinosaur. I was there when they had the the Step program, and so I kind of was able to move up within my wage thing, as long as I got an acceptable job performance evaluation or I did some things. I offered some things, and I'd be glad to send them to you, and take a look and

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you can see I'm not a disgruntled employee. I like the work that I do. And it's essential.

BRANDT: All right. But thank you for that. We, we got--

LATHROP: Somebody hit the red light.

BRANDT: [INAUDIBLE]. All right, thank you.

LATHROP: Mr. Knight, I'm just going to tell you what, what is evident to everybody on this side of the desk, which is when it comes to wages, that's the Executive Branch that negotiates those. We appropriate the money to, to fund the wage rates that are negotiated between the Executive Branch, Governor's Office and the state employees. Just to be clear. There are plenty of times, and believe me, that the frontline security guys would have been paid more sooner had we had our way with it. But it's up to the Governor to negotiate every state employee's salary.

TIM KNIGHT: And and, I've got I've got to play the squeaky wheel here, because if what we're doing, expecting to do is see those persons more, provide them with the care that we want to give them, I mean, my own philosophy, I treat the guys the way I would want to be treated if I was in this difficult circumstance.

LATHROP: Right.

TIM KNIGHT: And so but for me it's, again, I've, I've been around long enough, since God was a baby. So I can, I can man-- manage this. But my new therapists, they just leave. I get these great, skilled people and it's a provisional license person. They stay for a couple of years until they're fully licensed and they look at me and they say, Tim, I have student loans, I have kids. I'm getting \$20 an hour. What can we do?

LATHROP: Your point is well-taken. Senator Pansing Brooks.

PANSING BROOKS: OK, so thank you for coming, Mr. Knight. Or is it Dr. Knight? I don't know.

TIM KNIGHT: I'm not a doctor, but I can play one on TV. So I, I'm not I'm not a psychiatrist, I'm not a psychologist, I'm a therapist. I've a master's degree in counseling, and so I do therapy.

PANSING BROOKS: So I presume that you agree we're not handling segregation well.

TIM KNIGHT: I think that-- I'm glad to see there is some focus on segregation. The sad part is what ends up happening is, and I'm going to scuff up a little bit both on you and some other people in the audience are people making clinical decisions that, and they're not involving clinicians on how to help with some of this stuff. An example would be just like the training that you were pressing the director on, which is mental health training. Of course, this is brain stuff. This isn't somebody's fault, this is the way their brains are. We can help people learn that. I've taught that at-- I've helped other people learn things like that. We used to have a very effective program. And then this was outside of segregation. It was called the Violence Reduction Program. It was a yearlong program targeting individuals who came back and violent behavior at a-- and many of these people, usually 8 of 10, would come back for violence. Gang guys and all this other stuff. So all of a sudden we started to get some heat, mental health, by administration and other advocacy agencies saying: You have to shorten this. You have to shorten this. And I said, well, OK, we'll try. Can you give me more therapists so that I can hold more sessions so we can get it-- no, we're going to, we set it at nine months. Then they shortened it to six months, till all it is is an auditing program now. When I left the department 13, 14 months ago, the recidivism rate of those people that completed the program was at 13 percent. So we stood the statistics on their head and we did it by valuing people, helping them figure out what their script is, what happened in their lives, so we can help them understand that. Taught them skills to manage that without aggression. And these guys embrace that. It took them a little while because at first in group with me, you can imagine, they were a little taken aback. You know, they don't know what to think. But instead, what's happened now, it's purely an educational thing. It had, and therapy is not education. My undergraduate is in education. I am a certified teacher. It's way different. And again, I don't mean scuff up it, but if you think that a class is the same as a group therapy, you're sadly mistaken. I told, when I gave my exit interview, it was an hour and 15 minutes and was some of the most fun I've had in the last couple of years because, 'cause said, no, we just-- the treatment is too expensive. And I said, too expensive for the victims that are killed or hurt by people? Or for the family, the community? Just too expensive, Tim. Education, he said. I said, education. I said, you can't-- there's no research that shows you can educate people out of maladaptive behavior. Therapy is what-- and I finally looked at him and I said, you know, they have all those kidney dialysis suites up at the Penitentiary. I said, those are pretty expensive. Let's get rid of those and just give them a book on kidney failure. Education is better

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than nothing, right? And I didn't get a response. But I want to advocate for let's think about what-- you guys are in a reactive mode. This is all old school correctional stuff. You're not who--

LATHROP: I think you got to get closer to the mike so we have a-- we can transcribe this.

TIM KNIGHT: Well, good luck.

LATHROP: Believe me, we-- somebody is going to be transcribing what you're saying tonight.

TIM KNIGHT: Good luck with that. You're in a reactive mode. I see some proactive stuff happening and I see some people that truly care, which is great. But unless things get moved around here, what you're going to do is play catch-up the entire time. And it's just a shell game. Move those people over here, move them here. Double them up, don't double them up. Change can happen, and I've seen it happen with people.

LATHROP: We're working on it.

TIM KNIGHT: But, but you still also have to say, have a safe environment for the inmates as well as the staff. And there is the conundrum.

PANSING BROOKS: That's what we're trying to do. Thank you very much.

LATHROP: Thanks for being here and thanks for waiting. We still got two more bills, so we appreciate it.

TIM KNIGHT: OK. I apologize.

LATHROP: No, that's all right. Thanks.

TIM KNIGHT: All right, very good.

LATHROP: Anyone else here in a-- to speak in a neutral capacity? Seeing none, Senator Vargas to close. We have two letters of support and they appear to be from citizens Elena Salisbury and Shakur Abdullah. Senator Vargas, your bill has been fully aired.

VARGAS: Yeah, it is fully aired. That is right. You have how many more bills after this?

LATHROP: Two.

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VARGAS: OK.

LATHROP: One promises to be five minutes.

VARGAS: You are, you are. I said that too, I don't know--

LATHROP: Or Senator Wayne's staff is getting kneecapped.

VARGAS: Thank you, transcribers. OK.

LATHROP: Please don't put that in there.

VARGAS: I want to thank everybody for testifying positive and opponents. There's a couple of things I want to make sure to get on the record. And it goes along with some of the questions asked about the correspondence. I'm gonna to frame this. I don't want the impression to be, and I don't think it should, that when a legislator or a senator brings a bill and it is imposing a regulation or a standard of accountability, that that means we inherently believe that the department is not doing a good job. That is inherently important to me. I think it's important to our body. And the reason why is I sit in a different committee, I sit in Appropriations. We've fully funded every request that they've, they've asked, including new facilities, to then meet the increasing need. And being a proponent on that side, but bringing a bill like this should not make a senator, I'm speaking for myself here, seen as not thinking that they're doing a good job. I think the point of these hearings isn't to then highlight the things that are always going well, but to then identify problems and then bring legislative policy solutions. In my hearing testimony, it is all focused on how these are solutions. And what we're debating is whether or not we will take up different solutions to address an inherent problem. There are other bills that are taking that up. So I want that to be really clear because that, that part is important to me. And I know and, you know, I have, I have respect for Director Frakes. When he comes and asked for funding, we'll make sure to give it to him. And I know in part of his testimony, you know, it may seem like-- I'm not saying they're not doing a better job. They are doing a better job. But to think that doing the better job was an isolation of senators bringing up conversations like this in hearings, having accountability even from 2015 till now, and they're mutually exclusive and not related, I don't think is a fair assumption. The other thing I want to point, and I think is also important is there has been communication from the department to staff about this bill. Now, I think that's important because I think what we heard here on the record is that Director Frakes doesn't have a policy for how he engages his staff

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about bills. I think that's fair to say right now. And instead, what we do know is that Director Frakes contacted staff specifically about this bill. And the language, at least the first sentence of it, is: The attached bill will have a direct and significant impact on your safety. This is important because it's clear that not every bill the director is contacting staff to then make an informed opinion, which I believe that's an informed opinion, that first sentence, and that's coming from a director to staff. That, I think it's fair to say that that has an influence on how staff are going to proceed and what they do and do not weigh in on. That's not to say that concerns around safety are not heard or may not be valid. It's why I have constantly pushed for both pay increases through means that we can do outside of the Executive Branch, might include longevity pay, and supportive of the current administration's push and focus to then increase, and the, and the department and FOP to then increase salary. Our initial recommendation is that we, we full-- we fund these increases in salary that came to us in the mid-biennium budget. So that, that's really important here, that I want to make sure to put on the record. Because it does seem that a director picking and choosing which things they influence, even though they may say that it's clear that you're speaking for yourself, if the first sentence is really about setting the stage that something might be unsafe. What we're really trying to debate here is whether or not the policy and all the policies, not that it's either all good or all bad, but what we can and should not do to then further improve our system. So I want that to be said. There's a couple of things that I think are really, really good here. The first is there has been a decrease in restrictive housing. It's one of the reasons why we brought this bill. If I didn't think the department could handle reforms, I wouldn't bring the bill. OK? So I think that they can handle reforms. And I think what we see in some of this language, some of it is going to cost money. And there's, you're never going to hear me say we're not going to appropriate or try to figure out how to appropriate more money for staffing. Never been in the record. So if we have to figure out how to make that work, specifically the out-of-cell time, you're never going to hear me say anything negative to that. I'm going to be very positive on we need more staff. I'll be on the record again saying I would like to increase pay for everybody up and down the scale so that we can continue to be competitive. But a lot of these recommendations might be on reporting, setting standards, potentially making sure that we're consistently, let's say in 30 days, reviewing the different types of reasons why we're keeping restrictive housing. Having to then come up

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and identify exceptions to why we would keep somebody in restrictive housing beyond 30 days. I actually don't think that that is in, in misalignment with what the director said. The director said that we're currently at an average of 15 in our immediate segregation, 14 days immediate segregation, which means that some of these changes are actually more-- will be in line-- I mean, there will be a decreased population if we put them into effect. The 365-day cap, we're gonna have to work on that because this, this-- in his testimony saying 355 days for those assigned to longer term restrictive housing means we do have work to do. And I believe what we're seeing is about 100 individuals right now are six months or more. We're talking about a smaller and smaller population. And a lot of these, not all of these policies that I'm-- these statute changes I'm suggesting are really to try to hyper focus in on not overusing beyond specific amount of days. And if you-- if we evaluate the policy-- each individual recommendation, public council and office of Inspector General, electronic record share does not really-- I don't think is gonna be affecting the health and safety of individuals. Defining terms, putting some things that we passed last year into statute, inmates would not be confined to immediate segregation for more than 15 consecutive days. I think we're already getting closer to there. Maybe we change the number to 20 days, the 15-- these things are obviously movable things that we can work on. The, the step down approach is, is gonna cost some money and there might be some infrastructure changes. But I think the point and goal is can we do a step down approach? Colorado still has, what, 18,000 people in, in the correction system and 10 people in restrictive housing. That is less than 0.1 percent. I'm really happy that we went from 13 to 5. That doesn't mean we don't have room to grow and there's not a need for reform. The rest of these things-- continuous access to mental health treatment and clinical programming, I really don't hope that that's what's contributing to the health and safety. Making sure that we're not housing them for more than 365 days. Again, I don't, I don't see that connection yet. Discharge into the community, I think we can work on that to make sure that there's some transition period so we're not creating unintended consequences for public safety, putting them right back into the public. Confidential informants, we have received some feedback. Senator Slama, thank you for bringing that up. Happy to work on that component. All this to say is evaluate each of the policy language independently to see what we can do rather than completely blindly looking at this bill as unsafe for all members, because that is-- that's what I'm proposing to you. So I want to thank you. And if I haven't said it, I do want to commend the department for making some substantive changes in their own practices to get us to this point.

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And also want to thank the committee, because we realize that part of our oversight capacity and capability and our responsibility to our taxpayers is to make sure we're doing things to, to support and hold that accountable as well. And we did that last year. And this bill is to continue to go down this process so that most of us here have less than six years except you. We're gonna be in a better place from we're all left and, and we're leaving it in a good place for those that are gonna come and replace us at some point. Thank you.

LATHROP: Very good. Thank you, Senator Vargas. That will close our hearing on LB1208. I am going to jump LB1180 just because there's two people who promise to be very brief and hopefully that's exactly what happens. LB-- you may open on LB1180.

JAKE SEEMAN: Good evening, Chairman Lathrop and members of the Judiciary Committee. My name is Jake Seeman, J-a-k-e S-e-e-m-a-n. I'm the legislative aide for Senator Justin Wayne, who represents the 13th Legislative District encompassing north Omaha and northeast Douglas County. Senator Wayne is out today, so I'm introducing the bill in his stead. LB1180 is a fairly straightforward bill that makes a small change in statute, which will increase the number of alternate jurors the court may set aside for a trial up to six. Behind me, Tim Hruza, representing the Nebraska Bar Association, will be testifying in support of this bill and will be able to answer any questions the committee might have. Thank you for your time. And Senator Wayne, I'm sure appreciates any and all consideration on this bill and I will be waiving my closing.

LATHROP: You will, unsurprised. Yeah, wish, wish you were here like at 5:00. It's been a long day. Thanks. I don't see any questions for you, Jake.

TIM HRUZA: Good evening, Chair Lathrop, members of the Judiciary Committee. My name is Tim Hruza. Last name spelled H-r-u-z-a, appearing today on behalf of Nebraska State Bar Association. I was drafted by Senator Wayne to come in as a resident expert since he is gone today and kind of just give you a-- some quick background on the bill. The, the Nebraska State Bar Association supports the bill. When Senator Wayne introduced it, I think a lot of attorneys went, what's going on here? After some education and realizing what it's all about, it makes a ton of sense. And we, we determined to support the bill. I passed around to you what is a copy of Federal Rule of Criminal Procedure 24. What the bill essentially does is it makes a change to Nebraska's criminal statutes related to jury-- alternate jurors selected for a trial to mirror the Federal Rule, to provide judges

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discretion, to allow up to six alternate jurors that could be retained through the trial and then retained through deliberations. Senator Wayne has told me that he's had at least two instances from judges in the last year or a year and a half, where long, lengthy criminal trials have taken a week or, or more to try, have gone, been submitted to the jury, and then ended in a mistrial, only to require the criminal to sit in jail longer, waiting for a new trial date and all those things. Quick background: the Federal Rule has been this way, allowing six jurors since 1966. The Federal Rule allowed the court to retain those jurors through deliberations since 1999. Nebraska statutes regarding the number of alternate jurors have not been updated since at least before 1943. So it's a change that makes sense. We ask for your support and we thank Senator Wayne for introducing the bill. Happy to answer any questions anybody has.

LATHROP: Does anybody have a question? Senator Brandt.

BRANDT: One point of clarification.

TIM HRUZA: Sure.

BRANDT: So you said the criminal to sit in jail, you mean the accused?

TIM HRUZA: The accused-- the alleged, the alleged criminal. Right.

PANSING BROOKS: Good job.

LATHROP: It was funny. I was gonna say the same thing.

TIM HRUZA: I should have said the defendant. In the event of a mistrial, they might sit in jail longer awaiting a second trial date. Sometimes it can take awhile to get a jury put together. My apologies. Thank you, Senator Brandt. Yeah.

LATHROP: He's getting an associate degree in the law.

TIM HRUZA: I'm trying to go fast here.

LATHROP: Any other questions? Seeing none, thank you, Mr. Hruza.

TIM HRUZA: Thank you.

LATHROP: Anyone else here to testify in support? Anyone here in opposition? Anyone here in a neutral capacity? Seeing none, we do have a letter from Matt Kuhse, the Omaha City Prosecutor, in support. And

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with that, we'll close our hearing on LB1180. And that'll take us to the last bill of the day, LB786.

PANSING BROOKS: Welcome to your Judiciary Committee. Senator Lathrop, please begin.

LATHROP: Thank you. Good evening, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I am the state senator from District 12 and I'm here today to introduce LB786. I have some prepared notes, but I think I'm just gonna make this point. Last year we had a bill by Senator Vargas that was amended and incorporated into LB686. That bill provided that the department needed to end the practice of putting vulnerable populations into restrictive housing. Vulnerable populations included, among others, those with traumatic brain injuries and those with serious mental illnesses. The bill that I'm presenting today would basically require that the department conduct a screening. And the idea is when an individual is sentenced to the Department of Corrections, they go through the Diagnostic and Evaluation Center where they undergo certain evaluations. We would simply add a screening for traumatic brain injuries and serious mental illness. The bill provides that if that screening is positive, then they will be presumed to have either a brain injury or serious mental illness depending upon the circumstances. And that can be overcome by the department if they have someone who has more skill and does a deeper dive or a deeper evaluation of the inmate to determine whether or not they have a traumatic brain injury or a serious mental illness. Senator Vargas' bill does little good if we are not screening for individuals to determine if they have a traumatic brain injury or a serious mental illness. It also provides that in the event someone is in restrictive housing and I think it is for six months or longer, maybe I should have read this, for a-- for an extended period of time that they would be subject to a mental health or screening to determine if they have a serious mental health issue. I know that we have some folks here in opposition. I see-- or pardon me, in support, and I see Dr. Deol here. And given Director Frake's testimony, I'm looking forward to hearing what Dr. Deol has to say about the screening that takes place right now and whether we are identifying those individuals that have traumatic brain injuries. Our suspicion is that there are a lot more of them than we understand that we believe. And it is beneficial for this Legislature in making policy and ensuring that the restriction on restrictive housing are implemented and carried out and that we're not just ignoring these folks and then pretending like we don't have a problem. With that, I would appreciate your support of LB786.

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PANSING BROOKS: Thank you, Senator Lathrop. Any questions? OK, I have a couple things.

LATHROP: Sure.

PANSING BROOKS: Just first off, it was six months. It's on page 5, so "for a cumulative six months during any twelve-month period shall be screened." So that was right. And then I guess I'm interested because you do have a part on page 6, line 1 and 2 that talks about, "A new screening is not required for any inmate who has been so screened." So what-- have you thought or-- and I may have not caught the part in here, but what about somebody who may have been like pushed or assaulted and then they get a brain injury once they're in there? So I'm just wondering if they've already been screened then, then technically they can say, well, we've already screened you. Well, meanwhile, this guy's head was beaten into the wall.

LATHROP: Yeah, I suppose that that's true. What we wanted to avoid is a situation where we require an annual screening and somebody who hasn't been subject to any kind of an insult to the brain is screened unnecessarily and--

PANSING BROOKS: Maybe you could just add subsequent-- or subsequent to intervening assault or something like that or just--

LATHROP: Right. Right. I think that's a fair point.

PANSING BROOKS: --an intervening assault. OK. Anyway, thank you. Yes, Senator Brandt.

BRANDT: Thank you, Chairwoman Pansing Brooks. Wouldn't that just be part of the normal, normal concussion protocol? I'm sure when somebody gets injured out in the yard that they go in and--

LATHROP: Well, I know it would be if you were playing high school sports.

BRANDT: Well, I--

LATHROP: I, I don't know that it is if you are an inmate at the Department of Corrections. And perhaps Dr. Deol can answer those questions.

BRANDT: Thank you.

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PANSING BROOKS: Thank you, Senator Lathrop. OK. Proponents? Welcome. Thank you for staying here this long.

PEGGY REISHER: Yeah, I start off with good afternoon, but that's already wrong.

PANSING BROOKS: Yeah, it's been a long day.

PEGGY REISHER: So I am Peggy Reisher. My, my name is spelled Peggy, P-e-g-g-y, Reisher, R-e-i-s-h-e-r, and I live here in Lincoln. I'm the executive director for the Brain Injury Alliance of Nebraska. And I'm here today to urge you to support LB786. Traumatic Brain Injury, or TBI, is a disruption of the brain function caused by external blow to the head. We commonly talk about brain injury as it relates to football players and boxers. Here today to talk to you that-- you know, we have a larger but no less controversial group impacted by brain injury in our state correction system. I have colleagues in the states like Colorado, we'd heard a lot about Colorado today, Colorado, Indiana and Pennsylvania all are revealing some shocking statistics with their work. We're finding-- they are finding 50 to 80 percent of people in their systems have had a brain injury. Many of those brain injuries are due to assaults either before or, to your point, while in corrections setting. In the general public, the estimated numbers are hard to, to figure out for sure, but we've seen anywhere from 5 to 25 percent. So these numbers, if the numbers are similar in Nebraska to what they're seeing in Colorado, Indiana, we would-- I would claim that the correction system is our largest brain injury provider in the state. And yet we don't really know it. Brain injury, altogether with substance use, mental health, and trauma make it hard for people to think, they have cognitive impairments like poor judgment, poor impulse control. Problems that make that criminal justice revolving-- criminal justice just a revolving door. This gives us an opportunity-- this bill gives us an opportunity to both identify and measure if brain injury is indeed an issue in our state corrections system. If this screening indicates a significant number of individuals screen positive, then it's important to add this to the discussion when talking about prison reform. Screening for brain injury may help us get to the underlying problems which cause people to get into trouble. That doesn't make excuses that-- what a person has done, but it changes lifelong perceptions of what a person can't do versus what they won't do. Behavior is viewed as a deficit versus an outright defiance. Again, our colleagues in other states have begun this work and have paved the way. They have been using an evidence-based screening tool called the OSU TBI-ID screen, which is a part of my testimony that I've handed to you. The screen is not an assessment,

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but simply a screening tool. The screening tool favors sensitivity over speci-- specifi-- I cannot say the word. But in other words, to help identify that there's been a brain injury, but it doesn't give-- dive into the impairments as the assessment would do. The brief screen is more of a valid identifier than simply asking do you have a brain injury? The amount of time the screening takes is anywhere from three to five minutes, depending upon responses. Training on how to apply the standardized, valid screening is available on-line and it can usually be done within an hour. The screening tool can be done by anybody who takes the training. And I just really encourage-- urge you to support LB786 because I think it does offer a different lens on how we view behaviors. I think we are dealing with cognitive deficits or are we dealing with a behavioral defiance? Again, that conversation of won't versus can't needs to be asked.

PANSING BROOKS: Thank you so much. I appreciate your testimony. Any, any comments or questions? My only-- I guess I have a question, Miss Reisher, that how-- you said it's available on-line. Is that-- how long is that course?

PEGGY REISHER: The-- there's information also in the packet that I gave you.

PANSING BROOKS: OK.

PEGGY REISHER: But folks that have taken the on-line course, it's less than an hour. It's not hard.

PANSING BROOKS: That's not very long. Yeah.

PEGGY REISHER: It's just-- again, it's asking some specific questions that are on the screen. It does take-- it's more, though, than just giving a piece of, a piece of paper to somebody and saying, fill this out and let us know. It is an interview.

PANSING BROOKS: Thank you.

PEGGY REISHER: Yeah, thank you.

PANSING BROOKS: That's great. Any other questions? OK. Thank you very much for being here tonight. Next proponent? Welcome.

AMANDA WELLS: Good evening. Hi, my name's Amanda Wells, A-m-a-n-d-a W-e-l-l-s. I live in Omaha, Nebraska.

PANSING BROOKS: Can you speak up just a little bit, please.

AMANDA WELLS: Sure. And I'm a co-occurring mental health therapist at the Stephen Center HERO Program and president of Along the Willowed Path. In addition to my professional opinion and experience, I'm humbly here as a parent of two children, one with multiple traumatic brain injuries, and one with Autism Spectrum Disorder. And I thank you for allowing me to share with you how important I feel LB786 is. Brain injury is an invisible disability. It masquerades as belligerence, laziness, aggression, noncompliance, and other behavioral issues. Any one of these independently could be grounds for an unsuccessful discharge from a treatment program. Many of my clients at the Stephen Center HERO Program are required to participate in treatment as a component of their probation or parole requirements. In my experience, unsuccessful completion becomes a violation of these requirements and usually means a client returns to jail or prison. When we, clinicians, probation and parole officers, drug courts, etcetera, have the information these screens provide, we can have an opportunity to support an individual by making reasonable accommodations and recommending appropriate levels of care. Increasing the chances that these individuals can successfully return to society. The prevalence of brain injury at the treatment center is staggering. Most of my clients have experienced at least one and many more than one traumatic brain injuries. One of my clients recounted at least 26 times he lost consciousness due to a blow to the head or a fall. The first time was when he was 5-years-old. Science has shown us that multiple brain injuries are not just two plus one equals three; there is a multiplier effect so two plus one is actually nine. In the case mentioned before the individual and I apologize, I am not a mathematician by any means, so the number that was originally written is crossed out and there's a footnote with the actual number which is significantly greater. So it's basically twenty-six to the twenty-sixth power of traumatic encounters to his brain. It's highly likely that he suffered deficits because of these injuries. While these individuals need to be held accountable for their actions, I would never expect a client who's experienced amputation to run a mile without his or her prosthetic. Why would we expect those who've suffered traumatic brain injury, experience autism, intellectual differences, or mental health to make progress without supports? Screening is that first step. And if I can digress from what I have shared with you in writing. If you can take a minute and experience the mental fatigue that you probably are feeling after being in here a really long time today, that's the fatigue that a lot of clients have. A lot of individuals with TBI or significant mental health have just experiencing day-to-day interactions. And so having to overcome that in addition to changing behaviors can be a significant challenge. These screens give us insight to what areas we

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need to address and minimal accommodations that we can make, such as progress in writing so that they have hope to advance in the system. Thank you so much for letting me be here.

PANSING BROOKS: Thank you very much, Miss Wells, for coming today. I appreciate it and telling your story. Any questions? I just, I just want to say one thing. So with what we heard in the previous bill, it's pretty clear that punitive, punitive reactions to the kind of behavior you've just described don't necessarily help those individuals become better. Is that true?

AMANDA WELLS: I would agree that it doesn't take into account--

PANSING BROOKS: Isolation--

AMANDA WELLS: --the needs that they have to begin even wrapping their head around what their disability means.

PANSING BROOKS: So-- and I, I like what, I like what Miss Reisher said that what a person can't do versus what they won't do. And too often we are punishing people for what they can't do. And so I appreciate your coming and, and taking the time and waiting here this long. Very kind of you. Thank you.

AMANDA WELLS: Thank you.

PANSING BROOKS: Next proponent? Mr. Eickholt.

SPIKE EICKHOLT: Good evening, Vice Chair Pansing Brooks and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU Nebraska, testifying in support of LB786. As Senator Lathrop indicated earlier when he introduced the bill, this is a follow-up bill in many respects to LB686, which included Senator Vargas' LB739, which banned or restricted restrictive housing, or was also known as solitary confinement, for those individuals who are deemed to be vulnerable. And that includes those people who have been diagnosed with a serious mental illness, those people who are-- have a traumatic brain injury, and those people who are developmentally disabled. And this bill is really good because it provides for a way, a procedure, if you will where the department will identify those people at an early stage when they first enter the facility. If you look at the bill, it actually sort of builds on existing law on page 5, lines 14 through 28. Currently-- and you probably know this from hearing the bills, but I know this from practicing. When somebody goes to Department of Corrections, if they're a male inmate, they go to Diagnostic and

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Evaluation, and they're evaluated for a whole series of things for sort of previous criminal history, potential enemies they might have in the system, some basic physical and mental assessment of them is done in a classified place at a facility. And what this bill does is it just sort of requires the department to do a little bit more to, to respond to the requirements that are LB686 and that is develop a screening tool to identify those people with serious mental illness or those people with traumatic brain injuries. I looked at the fiscal note, and if you look at the-- and there is some cost to it that the department estimates. And it looks to me like the fiscal note, the bulk of that cost might be for the requirement that all those people who aren't screened as they're coming in, the bill requires that existing inmates be screened by November 30, 2020. And I think that's sort of the majority of the cost for the fiscal note. And I don't-- I make this suggestion respectfully, but perhaps one thing that Senator Lathrop or the committee can consider of maybe modifying that date in some way to minimize the impact for the department. Again, if Senator Lathrop is willing to do that, that was just meant to be a helpful suggestion. This does deal with restrictive housing. You heard the bill earlier today that Senator Vargas had. I have distributed a statement from Miss Conrad, she was going to testify but she had to go. And she did email you some materials earlier today for this bill and the other bill. One, while the department has lessened the number of people in what's commonly known as restrictive housing, and that is less than four hours out of cell time per day. The department has created a number of these different modified units, which does allow for slightly more than four hours a day out of cell. If you look at the materials that we sent and don't mean to minimize the gains the department may have made, but there's a big asterisk that we want the community to sort of know. If you look at the regulations that involved these new units, they are the schedules of cell out of time may be modified or limited by the security needs of the institution. In other words, you have a number of different units in Tecumseh and the State Penitentiary that are sort of-- I think somebody used the term earlier, [INAUDIBLE] restrictive housing light where you have something that's very similar to restricted housing but it's not labeled as restrictive housing by the department. And I just wanted to put that on the record.

PANSING BROOKS: Thank you, Mr. Eickholt. Any questions for him? Thank you for waiting this long and--

SPIKE EICKHOLT: Of course.

PANSING BROOKS: --for your time. Appreciate it. Next proponent?

JASON WITMER: Jason Witmer, W-i-t-m-e-r. I kind of feel like this sort of, as you know, kind of blends with the last bill, of course. But with the obvious, it protects vulnerable people in a position where they're in a place that has absolute power. So there needs to be when people lose their course systems, some type of regulation. So I feel that this is good. I also want to point out, I want to point out I think it applies both place is restrictive-- restrictive housing is evidence-based practice. We love evidence-based practice, yet re-- re-- rehabilitation, evidence-based practice, that's what we talk about. The best thing to use. So restrictive housing has shown evidence-based practice that it's harmful. It hurts. It makes people unstable worse, stable people unstable, etcetera, etcetera. All this violence that we're talking about now that didn't exist like this ten years ago, didn't exist like this eight years ago, didn't exist like this six years ago, that suddenly exists like this now that Nebraska's never seen has existed in a realm of more restrictive housing use than it came down. But people miss the point that there's a restrictive-- the whole yard is restricted movement, modified movement. So when you get out of restrictive housing, you feel like you're still in a restrictive housing that didn't exist before. And these gangs that guys that just want to control, that don't really care about the life of their brother that wants to finally go home are now able to execute these problems of the staff come on, come on the gallery. You have to assault them. And then the other brothers are like, yeah, we love you until we got assault you because you're not assaulting them. This is the vulnerable population that's also getting manipulated into this. This is also the vulnerable population we have not yet considered who are under 25, who are still juveniles because we're the worst, because we'll do anything to please anybody. And we're taught violence and restrictive housing is violence upon our psychology eventually end up upon ourself. And the only way I found a way out of it was to exude violence upon other people because I felt better getting angry at everybody instead of crying. So and then one point I just want to add, because I think I talked enough is so I come from the other side. However, like the senators have said that sometimes people think when we're proponents to these things that we don't have a interest in the safety of staff. So the person you would want to keep most safe in your life would be your child. Correct? Because my daughter works in the Department of Corrections and has in Tecumseh, and now another facility. She hasn't asked me to speak, so I don't say her name or what facility, but plenty of people know her. But my point being is I'm not in this because I just want guys to get out the hole. I've seen that-- what the practice does and I've seen what being out the hole in amongst your peers could do eventually for you when you got

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them peers that step up. So this practice is harmful overall. I'm glad this bill is out. I'm glad LB1208 is out. I think accountability-- I think the department can figure it out once the pressures we put on them. They figured out some other things when they needed it. They can figure this out. Thank you.

PANSING BROOKS: Thank you, Mr. Witmer. Anybody have anything to add? Well, I'm so pleased that you came forward and spoke. Thank you very much.

JASON WITMER: Thank you.

PANSING BROOKS: Next proponent? Welcome, Mr Gage.

BRIAN GAGE: Welcome. Brian Gage, B-r-i-a-n G-a-g-e. I know it's gonna be no questions and no ask, but I have to say I have a student that handed me this bill and couldn't believe that it's not part of the law already. There-- her family has close members that have bipolar, couldn't imagine them being in a state of restrictive housing. And I, I have through the years, through the decades, I had a-- I worried about the people not only just pulling out the hair or eating feces or whatever they were doing, I worried about the ones that were curled up on their bed that slept with-- they were just as important as the other ones. I am glad to hear some of the strives the-- our department in Nebraska is doing. My caution-- and the reason I'm testifying is that whatever they are doing, if they're screening individuals better now at Diagnostic and Evaluation Center, if there is-- and to reduce the costs, maybe have it before you place somebody in restrictive housing or segregation or segregation light, whatever they want to call it, that the screening is done prior because there's such a-- this bill allows if a person does have bipolar or schizophrenia, etcetera, they still can't control the individual by placing them on immediate segregation, then place them in the mental health secured mental health unit. That's how I read it. So those things are to keep staff safe, and that's the other thing I heard today. So the idea is-- I'm glad the strives the department had. My recommendation is now put it into law so that when a new administration, whatever it come that it can't just be changed. That's all I have.

PANSING BROOKS: Thank you. I appreciate it. Any questions for Mr. Gage? Thank you for staying and coming again. Appreciate it. Next proponent? Good evening.

ERIN ARELLANO: Hi.

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PANSING BROOKS: Thank you for staying.

ERIN ARELLANO: Senator Lathrop and members of the committee, my name is Erin Arellano, E-r-i-n A-r-e-l-l-a-n-o. I live in Omaha, Nebraska. My son, Carlos, inmate number 87569 is currently housed in-- at Lincoln Correctional Center. He has an intellectual developmental disability. His IQ is 57. Although I support LB786 or the idea of it, I do have concerns in particular regarding the screening administered during initial classification and the November 30, 2020 mandate that the department will screen every inmate in custody to identify these vulnerable populations. Even with the caveat that a new screening will be required if the inmate-- no screening will be required if the inmate previously was screened under 83-179. Given the current overcrowding situation, it is likely that this endeavor will be a failure. Additionally, current assessment tools were not developed specifically for individuals with I/DD and they are not being administered appropriately to assess the specific population. In fact, there is scholarly evidence that actuarial risk assessment tools discriminate against those with I/DD in the way they overlook fundamental cognitive differences. To adequately identify and diagnose developmentally-- developmental disability within our prison population would require the implementation of new tools, or at the very least, adapting the current tools and hiring and training professional assessors, all of which would cost time and money. None of which is plentiful. The key is to identify the vulnerable population. There are other state agencies that already have this population identified within their membership. So my suggestion is to have-- collaborate with these agencies, to cross-reference their databases to identify those who are I/DD within the prison system. It is admirable to write a mandate to identify and then protect this vulnerable incarcerated population. However, if the mandate cannot possibly be completed appropriately within the timeframe, what good does it do? Change must be actualized and not merely articulated in order to effectively mitigate the systematic disadvantage developmentally disabled prisoner's face. I am not a professional, but I am a mom with nearly four decades of experience dealing with medical, psychological, educational, and now criminal justice professionals related to my son's disability. I don't have all the answers, but I have ideas. So I want us to do it right from the beginning. Thank you.

PANSING BROOKS: Thank you so much, Miss Arellano. Any questions? I have one if you don't. Go ahead, Senator DeBoer.

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DeBOER: Have there been assessments that have developed with I/DD folks in mind?

ERIN ARELLANO: Yes, or there are some that have been-- that are used currently that have been adapted to the I/DD population.

DeBOER: So could those be sort of used for everyone and then go from there?

ERIN ARELLANO: I guess my question is, what screening tools are they using to identify I/DD in the first place? And are they actually doing the screening upfront? My son was in and didn't have any kind of screening other than classification in what was already on paper until just a few months ago. And he's been in since 19-- or 2017. So it took them a long time to get to the place of actually identifying his disability.

DeBOER: And so to clarify, are you in favor of the bill?

ERIN ARELLANO: I am in favor of the bill. I think the bill is important. I just think that-- number one, I think there's a quicker way to identify the I/DD population through information already available in databases through the Department of Education or through the Department of Developmental Disabilities that if you could cross-reference--

DeBOER: That might get some, some of the--

ERIN ARELLANO: --you might actually be able to identify people and then be able to target them for appropriate assessments.

PANSING BROOKS: Any questions? Well, thank you for coming, Miss Arellano.

ERIN ARELLANO: Thank you.

PANSING BROOKS: I'm-- number one, you are the second house, so I'm thrilled that you come forward with ideas. It's great. We're grateful for that. So I guess I'm interested, do you have any idea-- because it seems like you've worked with all of these departments and groups. Do you think there would be issues about confidentiality if there was cross-referencing between department?

ERIN ARELLANO: I think that there would be ways to-- because they're all state agencies, there should be ways to kind of get around that. Well, you-- we're only-- it isn't like the public needs to know this

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information. It's for kind of a need to know. And I think that could be written into it, and probably the legal counsel could probably determine.

PANSING BROOKS: Because you, you feel-- excuse me, you feel like the Department of Ed and DHHS has, has tested much more completely. And certainly with that information--

ERIN ARELLANO: They've identified through psychological counseling.

PANSING BROOKS: OK.

ERIN ARELLANO: The Department of Developmental Disabilities, you have to actually go through testing and assessment and to be able to qualify for their programming and--

PANSING BROOKS: And so of course not every person that's in our prisons has--

ERIN ARELLANO: No.

PANSING BROOKS: --had that testing.

ERIN ARELLANO: No.

PANSING BROOKS: But when available, you're saying that, that would be beneficial?

ERIN ARELLANO: Yes.

PANSING BROOKS: Thank you for coming and telling us that.

ERIN ARELLANO: Thank you.

PANSING BROOKS: We appreciate it.

ERIN ARELLANO: Thank you.

PANSING BROOKS: Any further proponents? Proponents? Any opponents? OK, please come forward. Welcome. Thanks for staying.

HARBANS DEOL: Good evening, Vice Chair and members of the Judiciary Committee. My name is Harbans Deol, H-a-r-b-a-n-s D-e-o-l. I'm the medical director for Department-- Nebraska Department of Correctional Services. I am here today to provide testimony in opposition of LB786. This bill poses multiple concerns. The first is the requirement that evidence-based screening tools be utilized for validation or traumatic

brain injury, developmental disability, and serious mental illness. While most of the psychological tests have empirical evidence and are valid and reliable, they are testing protocols. Screening tools are by nature, simple and quick tools that provide information about the possible presence of an issue. Currently, mental health staff interviews all the individuals at intake and ask questions in order to screen those issues that I just mentioned. For example, if an inmate indicates that he or she has a TBI, we work to obtain those records. We also advise medical staff of the report and ensure continuity of care and we schedule the medical follow up. TBI can be screened and for and those falling below the cutoff scores can be referred to a psychologist for additional testing. Similarly, for a developmental disability, inmates are asked about participation in individualized education plans, as well as any history of disability. Academic testing scores are reviewed specifically for reading. Those who score below a fourth grade level are referred to mental health for follow up. If additional testing appears to be warranted, the persons are referred to a psychologist. All inmates are asked about private mental health-- prior mental health diagnosis. That includes information about prior and current symptoms, use of psychotropic medications, and family history of mental illness. Depending on the response, the person is referred for psychiatric services and a follow up by mental health professionals. The second concern with LB786 is that it duplicates the diagnosis process that NDCS already utilizes. Our current practice of interviewing all individuals entering NDCS allows us to screen for potential issues like SMI, TBI, and DD. When concerns arise, referrals are made for follow up and interventions that are utilized. Once an individual determinations are made, inmates are provided mental health services through individual and group therapy. When necessary, inmates are housed in mission-specific mental health housing. Inmates are taught how to stabilize and manage their symptoms, develop healthy habits, improve their medication compliance, and work to transition to a lower level of care. The third issue is related to finding additional psychologists. Per licensing, psychologists are required to administer a score and interpret psychological testing. Competition for psychologists is not an issue only for NDCS, it's a national problem. According to the Health Resources and Services Administration, based on the number of those entering and exiting the profession, the U.S. national psychology work force will grow by 1 percent between now until 2025, and expected to grow in the national need for psychologists to increase by 6 percent. The resulting shortage is estimated to be between 8,000 and 25-- 52,000 psychologists by 2025. Mental health works in tandem with psychiatry at NDCS with medical, social work, custody, and unit staff

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to ensure that all inmates receive the best options for behavioral change. It is unclear how LB768 [SIC], if implemented, would improve our process of current diagnosis. Madam Vice Chair, I'll be happy to answer any questions you may have.

PANSING BROOKS: Thank you very much. Yes, Mr.-- or Senator Brandt.

BRANDT: Thank you, Chairwoman Pansing Brooks. Thank you, Doctor, for testifying and for, for waiting until the bitter end tonight. So according to your testimony, are you screening for this now?

HARBANS DEOL: Yes, we do.

BRANDT: So--

HARBANS DEOL: We do, we just-- we talk about the screening questions by asking [INAUDIBLE] questions and mental health staff and medical staff actually ask those questions. And we have a behavioral health appraisal form that's being implemented at this point, so we ask for DD. And you have to remember that DD has to be tested while, while the child is young.

BRANDT: Um-hum.

HARBANS DEOL: The testing can be [INAUDIBLE]. Especially with TBI, the definition of TBI is so varied and it depends on the symptoms that appear. The question that comes to us is that we need to look for physical and mental health symptoms or impairment that we can address those issues, and we do those. As, as of our last year data showed that we have 24 people in our system who are DD, and about 13 people with TBI.

BRANDT: So obviously you don't feel the bill is necessary, but yet you say you need more psychologists in your system?

HARBANS DEOL: We're talking about the-- if the screening tool is mandated, that we will need additional psychologists. We do have psychologists right now that we need to do the current scope of practice that we provide.

BRANDT: All right. Thank you.

PANSING BROOKS: Do you have something?

DeBOER: Yes, I'm sorry. I-- some of what you said, I--

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PANSING BROOKS: Senator DeBoer.

DeBOER: Yes, thank you, Vice Chair Pansing Brooks. My, my brain is slowing down a little bit. And so some of what I-- you said, I maybe didn't fully take in so maybe you can help me out. You said that the, the process required in this bill is duplicating the process that you already administer?

HARBANS DEOL: That's correct.

DeBOER: So if you're already administering it, it's-- I mean, my understanding is that it just requires you to do something and if you're already doing it great.

HARBANS DEOL: Right. So let me, let me expand on that one, so behavioral health appraisal form at intake asks a series of questions. So we have a different category, so mental health status exam, we'll talk about mental health history, psychiatric histories, suicide attempts, previously medication issues that [INAUDIBLE], development disorders. We'll talk about if they had any disability in the past. Those questions will be asked. And for the-- for TBI, we'll talk about any injuries that they had. And we know the definitions that really-- variable for TBI. But depending on the response and the residual symptoms they might have, we will ask for those records and refer them to a clinical psychologist who are really the expert in doing additional testing.

DeBOER: So it's not really duplicating your efforts because you would be relying upon other records?

HARBANS DEOL: We will try to verify all those records in the past that have had.

DeBOER: OK. So if this bill were to be rewritten to say, either a previous diagnosis must be found or they must have a test performed, would that alleviate your concern that it would reduplicate efforts?

HARBANS DEOL: To give a-- for example, we do screening tests right now, the questions that we do ask. And we had an example last week--

PANSING BROOKS: Could you speak up a little bit into the mike.

HARBANS DEOL: So we do ask questions right now for [INAUDIBLE] intake process. And we had a patient who came in last week saying what-- he was in a car injury and that had some cognitive impairment. He was automatically referred to a psychologist for additional testing. So

the bill the way it says that we will have to do screening for every person entering into the system. And I think we are talking about is we do the initial screening and then if the red flags come up and we refer to the clinical psychologist and the psychiatric services to do, do those testing. The other example we can talk about TBI, we, we talked about people coming into the system, actually told us that while they were in Iraq and Afghanistan war and-- but did not elaborate on the other issues of the head and coming to finding out in the housing unit, the patient was masturbating at times-- all, all-- at inappropriate times and exposing people to those, while those are directly related to TBI. And we address those patients to be referred to a clinical psychologist for additional testing. Neuropsychometric testing can be done; they would refer for some imaging studies. And we talk about the MRI, CT scan, or the scans, scans based on what the symptoms are. So the issue for us is that they might have a TBI injury and but we do for the symptoms that the residual symptoms they have. And that's what we are addressing at this point.

DeBOER: So are you saying that the bill is redundant or are you saying that the bill, the bill is unnecessary?

HARBANS DEOL: Well, we already do these things. So I think I feel this bill is unnecessary.

DeBOER: So-- OK, so you think that you already fulfill all the pieces of the bill and therefore it's unnecessary?

HARBANS DEOL: That's correct.

DeBOER: But if we were to, say, pass the bill to make sure that when you're not there because you're a good actor, we've got a good group there now, but maybe the next guy won't be as good, then do you have problems with the bill putting in place, just codifying the best practices that you already have?

HARBANS DEOL: Well, let me kind of give a little bit assurances, I know the historical background for NDCS back when the director came on 2015 on. We made lots of changes in the policies. And the one way to make sure this bill-- the screening tool that's being done, we can make sure policies are being followed through and they are implementing the process. And we've got to share those policies with everybody else. Hopefully when I leave, the next person cannot change those policies.

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DeBOER: Sure. But one way that we as a Legislature can make sure that those policies will continue to be in place, regardless of who's in the very positions that you have, is by putting something like this in place.

HARBANS DEOL: True. But I also want to make sure that the clinical testing tools were defined, what the definition might be, I think we should rely on-- to the clinical psychologist and the psychiatric services in determining what the tools they use.

DeBOER: Yeah, and I, I can take your point there absolutely. And so I think there's probably a way we can write this bill so it's broad enough that you all can determine what the best methods are. And as future methods become available, that those state of the art methods or whatever the best method is available at that time can be used.

HARBANS DEOL: That would be a solution, yes.

DeBOER: OK.

PANSING BROOKS: Any other questions? I guess I would just add, so what you said was the current practice of interviewing all individuals entering and NDCS allows us to screen, but that doesn't mean that you do screen. And we heard testimony about somebody who went two years before you did screen.

HARBANS DEOL: Yes.

PANSING BROOKS: So, I mean, if you're depending on somebody with a mental issue to tell you they've got a problem that seems sort of backwards.

HARBANS DEOL: So I totally agree with you. A couple of years before I came in 2017, we did not have policies for the screening process. We've tried to consolidate all the departments concurrently as one holistic approach. So we developed this behavioral appraisal form at intake, which asks those questions. So I agree the testimony that was done earlier, two years ago, there were not screening, but we are screening, we are screening 100 percent of the population coming into the system.

PANSING BROOKS: OK. So I agree with Senator DeBoer then at that point-- so you're a good actor, but the next one might not be so good. So-- or if somebody decides it's too expensive, then all of a sudden it's not going to happen. So I think my next question relates to finding additional psychologists, because we heard from Miss Reisher--

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was that how-- and that, that it's something that it's, it's more accessible to people after taking an hour of training to be able to get the initial information immediately about whether or not somebody has a some sort of mental health issue. So what do you say to that whole thing versus the need to hire lots more psychologists?

HARBANS DEOL: And I'm just talking about the same, those are screening tools by nature that just identify a defi-- some deficit. And we're already doing those by doing our own questionnaires. And there isn't really necessity to add additional training. We have clinical psychologists are trained and mental health psychologists are trained in this determination to find those deficits for, for appropriately.

PANSING BROOKS: OK. And I'm looking at-- is Miss Wells, I think who spoke about-- sorry. Yeah, I think it was Miss Wells that talked about-- no, it was Miss Arellano, that talked about trying to get information from school-- the Department of Education, the Department of Health and Human Services. What's your reaction to that discussion?

HARBANS DEOL: I think that's a great idea, but it's going to cost a lot of money to do those things, but that's what we need to get the information from the Department of Education or the school system.

PANSING BROOKS: Why, why would that cost money if, if, if these departments that are already interconnected have information?

HARBANS DEOL: If they will share that information, absolutely. That's got to be-- have a electronic database for us to track those information. Right now, we do by paper. And sometimes we're not even able to get that information from the Department of Education or the school system. And that's when the delays come in to say developmental disability testing is all done when the-- when kids are little.

PANSING BROOKS: OK, but you did mention something about working with the Department of Ed. Is that correct? And others?

HARBANS DEOL: We don't-- we, we try to obtain the records from, from the school system.

PANSING BROOKS: And so, so do you have to have the inmates sign off to allow you access to those records?

HARBANS DEOL: That's correct. And then also develop-- the, the issue that you do with these consent at that point and person who's an I/DD might not remember where he got the testing done. So we actually have

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to look at the guardianship and talk to the guardianship to get the consent as well.

PANSING BROOKS: Well, it sounds like we're almost all on the same page. That's great. I think your testimony should have been neutrally, so. Anyway, thank you for coming. Any other questions? Thank you, Doctor.

HARBANS DEOL: Thank you.

PANSING BROOKS: Any other opponents? Opponents? OK. Anybody in the neutral? Thank you. Thank you for hanging around this long.

JOSEPH SCHWARTZ: Sure. Thank you and good evening. I realize I'm standing between everybody in, in wrapping this up. So my name is Dr. Joseph Schwartz, spelled J-o-s-e-p-h S-c-h-w-a-r-t-z. I'm testifying today as a professor in the School of Criminology and Criminal Justice and a faculty affiliate of the Nebraska Center for Justice Research at the University of Nebraska Omaha. However, in this capacity, I do not represent the University of Nebraska, nor does my testimony represent the official position of the University of Nebraska. I have an interest in brain injury and the ways in which such injuries impact subsequent cognitive and behavioral changes. I've been working in this area for approximately five years and have published in academic journals on these topics. Although precise estimates of brain injury in the general population of the United States are difficult to come by, available estimates, estimates indicate that between 8 and 12 percent of the overall population have sustained one or more brain injuries. Incarcerated individuals are far more likely to experience a brain injury than, than members of the general population. With estimates indicating that between 50 and 60 percent of adult prison inmates within the United States have previously sustained a brain injury. Elevated rates have also been reported for justice involved youth, with research estimating that approximately 30 percent of juvenile offenders having experienced a previous injury. Within Nebraska, the data are far more sparse. My colleagues and I have been working on a project focused on examining brain injury, among other risk and need factors among inmates at the Douglas County Jail. We screened all individuals entering the jail during a seven period-- seven-month period from February until September of 2017 to examine the overall prevalence of brain injury, among other issues. The preliminary results, which are presented on the back of my testimony, indicate that approximately 38 percent of the nearly 5,000 individuals in the study had sustained a previous brain injury, with rates relatively stable across males and females. I would like to point out,

though, that jail populations are significantly different than prison populations, and I'd be more than happy to answer more questions about that study or about those findings. One of the main goals of our project with the Douglas County Corrections is to simply document the extent to which brain injury is concentrated within individuals housed in the jail. LB786 represents another important step forward in identifying brain injuries among our correctional populations. A systematic, rigorous data on the overall prevalence of brain injury among justice involved populations is difficult to come by and relatively rare, particularly at a statewide scale. This problem is further compounded when considering the problems that accompany brain injury, many of which were already discussed in previous testimony. So these observations raise at least two considerations for criminal justice agencies. First, the impact provided-- the impact of provided programming may vary based on injury status with some evidence-based institutional programming. While some evidence-based institutional programming has been found to be effective in reducing recidivism and addressing other criminogenic needs, studies have indicated that the effectiveness of such programming can vary across different groups of individuals, stressing the importance of pairing programming and individuals in a systematic manner. Second, specialized training may better equip correctional staff in communicating and interacting with justice involved individuals with brain injury and increase institutional safety and efficiency. Interacting with individuals who have sustained brain injuries may present a unique challenge for correctional staff and administration based, at least-- based at least in part, on the specific needs that characterize this population. So in closing, screening correctional populations for brain injury offers many advantages for policymakers, correctional administration and staff, as well as members of justice involved populations. Before a better solution to the problems that accompany brain injury can be designed, there needs to be a better understanding of the scope of the problem, and this objective can only be accomplished with rigorous and systematic data. A lack of such data limits the overall understanding of the problem and limits the speed and efficiency in which new programming and procedures aimed at addressing these issues can be introduced. Thank you, again, for this opportunity and I'm happy to address any questions to the best of my ability.

PANSING BROOKS: Thank you, Dr. Schwartz. Yes, Senator DeBoer.

DeBOER: I just want to make a comment that as a fellow academic, I appreciate testimony that has references at the end.

JOSEPH SCHWARTZ: No problem. Happy to do it.

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PANSING BROOKS: Any other questions? I would just add, so we're hearing that supposedly that the NDCS is doing this already. So do you-- can you not get access to that data?

JOSEPH SCHWARTZ: I've not been-- that data, that data has not been available to me. One of the things--

PANSING BROOKS: You say data, I say data.

JOSEPH SCHWARTZ: It's all, it's all right. It's all correct. Yes, tomato, tomato, right?

PANSING BROOKS: Yes, exactly.

JOSEPH SCHWARTZ: Yes. I have not have, have not had access to those data. I will say, though, I have not formally requested such data. One of the things that I, I would be a little bit hesitant about as a researcher in this area is it does sound like we might have a little bit of an apples to oranges sort of situation here where, you know, certain jurisdictions and, and other, you know, research projects are employing a particular screener. Whereas, if we're using different screeners across different populations, it makes it difficult then to make comparisons across those populations. The other thing I would add is that the screener that, that Miss Reisher mentioned earlier, which is one that I've, I've used. It's the one that we used in this Douglas County project as well. It doesn't just take into account previous diagnoses of TBI, it's a screener. So, so what we expect is that in these types of populations, there are many, many times in which there are TBIs that are undiagnosed. And so the idea is that the screener will pick up on those as well as previously diagnosed TBIs. So it's a measurement issue where we could be dramatically underestimating the number of TBIs that we're seeing in a given population if we're using a screener that's a little too coarse where we're relying on really stringent criteria such as a previous diagnosis, which is a pretty formal measurement.

PANSING BROOKS: So are you neutral because you're-- because it doesn't list-- I'm sorry, I don't-- I can't find it in the bill, but are you neutral because it doesn't list access to data or why are you neutral?

JOSEPH SCHWARTZ: I'm neutral just because I wanted-- my goal today was to just present the research, the current state of the art research on this area. You know, why-- you know, brain injury information would be potentially useful, but I'm not necessarily, you know, advocating in any way.

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PANSING BROOKS: So, so do you know if it's in the bill? I would have to check it again, but, to get the, to get--

JOSEPH SCHWARTZ: In regarding to data access?

PANSING BROOKS: Data, yes.

JOSEPH SCHWARTZ: I'm not sure if that's in the bill,--

PANSING BROOKS: OK.

JOSEPH SCHWARTZ: --but that would definitely be useful to folks like me.

PANSING BROOKS: And, and what about the comments by Miss Reisher that, that you, you could train the staff pretty easily to be able to give these assessments?

JOSEPH SCHWARTZ: I think it depends on the staff. So I, I don't think that we necessarily want officers doing these sorts of things. But I think with the right staff, I think that's absolutely a way forward. I mean, this is a-- an assessment that is not a difficult assessment to provide, at least in regard to TBI. I mean, I would trust my graduate students to administer it with the correct training.

PANSING BROOKS: OK. Why not the officers?

JOSEPH SCHWARTZ: I-- so I've, I've worked a little bit with officers as well as within different correctional institutions in regard to research. I think that the rapport is certainly important that the officer-- that, that individual officer has with, with any potential justice involved individual. And I think that can vary across officers and across justice involved individuals. So having a third party, somebody who works in a different capacity, whether that be a trained psychologist or a trained social worker of some kind, somebody else, I think it might just give a little bit more concrete measurement in regard to that assessment where we don't necessarily have a situation where we have an officer who maybe is disliked by that potential justice involved individual who then maybe is, is not going to answer questions or not be willing to, to provide the same information that they would to maybe a more neutral individual.

PANSING BROOKS: OK. That's hard to, hard to make happen. But anyway, any other questions for Dr. Schwartz? I don't see any. Thank you for coming tonight.

JOSEPH SCHWARTZ: All right. Thank you.

PANSING BROOKS: And any other neutral testifiers? Senator Lathrop.

LATHROP: You were probably hoping I would waive close.

PANSING BROOKS: Don't worry, we don't get mad, just even.

LATHROP: So there's a purpose for this information. Right? I appreciate that the academics want to know what the population looks like, but there's a purpose for this. Last year, we made it unlawful effective March 1 to put in restrictive housing any of these individuals. And while I have a lot of respect for Dr. Deol, what I heard was, we're already doing this. And what's interesting is for somebody that's already doing this, they dropped a \$90-- no, \$761,000 fiscal note on this for something they're already doing. It's more, it's more, you guys don't have it right. We know, we know over at the Department of Corrections what we're doing. You guys stay out of our business, we're already doing this. When they-- when Dr. Schwartz and company went to the Douglas County Department of Corrections, the preliminary results revealed 38 percent of nearly 5,000 individuals in the study had a previous brain injury, with rates relatively stable across male and females. What we want to know is do they have a brain injury? Are they developmentally disabled or do they have a serious mental illness? If you're already doing it and this bill is unnecessary, then we wouldn't have a fiscal note, right? Somebody thinks somebody thinks we're asking them to do something that's gonna require more work, more experts. A lot of these people-- so I do personal injury work. I've represented people with frontal lobe injuries, brain injuries, and their personality change, the executive, their personality changes, that filter changes, and all a sudden they're doing impulsive things and they get in trouble. A lot of them end up divorced. They're-- I know one guy in particular ended up at quality living and his families just left him, you can't be around him. And we're doing this for a reason, we're doing this for a reason. And if they're already doing it, then we shouldn't have a fiscal note. And the fact that we have a fiscal note would suggest to us that we're asking them to do something they're not already doing. And it's hard to reconcile the testimony with the fiscal note. And I, I had a little difficulty hearing Dr. Deol, and I'm-- we're gonna talk to Laurie about turning the speakers up in here if we can, because I, I have trouble hearing when I'm sitting back there. So I thought he said we had 13 people-- I'm, I'm not sure of the number, but it was way lower than one would expect for a population that is incarcerated in terms of the number of people with developmental disabilities or traumatic

brain injuries. And I'm not talking about a concussion that somebody recovers from, from an old football injury, but something that's left an impairment that would make them not suitable for a placement in restrictive housing under Senator Vargas' bill. And by the way, if those are their issues, they ought to be addressed in terms of what do we hope to accomplish during the period of their incarceration at the department. I honestly don't know where to go from here because I'm told we're already doing this. But don't pass the bill because it's dragging around a fiscal note that is staggering for something that we're told they're already doing. So I guess we'll try to catch up with Dr. Deol and find out going forward exactly what they're doing. What-- and here's the other thing, so they do a screening, and what do they do with it? This bill says if you have a, if you have a positive result of a screening, you need to do something else to confirm it. And you can rule out a false positive during that additional assessment. But until that happens, they're not going in restrictive housing. And that may be why it's-- why it picked up a seven hundred and some thousand dollar fiscal note. So I would appreciate your support of this bill.

PANSING BROOKS: Thank you, Senator Lathrop. Before we close the hearing, there are letters of support from Judy Nichelson from the Nebraska Brain Injury Advisory Council, Annette Dubas from the Nebraska Association of Behavioral Health Organizations, Jennifer Meints, Nebraska Council on Developmental Disabilities. And that closes our hearing on LB786. Thank you, all.